

Mojave Desert
Air Quality Management District



FINAL
Staff Report
Proposed Amendments to
Regulation XIII – *New Source Review* and
Adoption of Rule 1600 – *Prevention of Significant
Deterioration (PSD)*

Amended/Adopted August 22, 2016

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List of Acronyms

| | |
|-------------------|--|
| BACT | Best Available Control Technology |
| BARCT | Best Available Retrofit Control Technology |
| CARB | California Air Resources Board |
| CCAA | California Clean Air Act |
| CEC | California Energy Commission |
| CEQA | California Environmental Quality Act |
| CO | Carbon Monoxide |
| FCAA | Federal Clean Air Act |
| FONA | Federal Ozone Nonattainment Area |
| FOP | Federal Operating Permit; also referred to as Title V Permit. |
| H ₂ S | Hydrogen Sulfide |
| H&S Code | California Health & Safety Code |
| HAP | Hazardous Air Pollutant |
| MDAB | Mojave Desert Air Basin |
| MDAQMD | Mojave Desert Air Quality Management District |
| NAAQS | National Ambient Air Quality Standards |
| NANSR | Nonattainment New Source Review |
| NSR | New Source Review |
| NO ₂ | Nitrogen Dioxide |
| NO _x | Oxides of Nitrogen |
| O ₃ | Ozone |
| Pb | Lead |
| PM | Particulate Matter |
| PM ₁₀ | Particulate Matter under 10 microns |
| PM _{2.5} | Particulate Matter under 2.5 microns |
| PSD | Prevention of Significant Deterioration |
| ROC | Reactive Organic Compound. |
| SAAQS | State Ambient Air Quality Standards |
| SCAQMD | South Coast Air Quality Management District |
| SIP | State Implementation Plan |
| SO ₂ | Sulfur Dioxide |
| SO _x | Oxides of Sulfur |
| TAC | Toxic Air Contaminant |
| Title V | Federal Operating Permit Program (Title V of the Federal Clean Air Act). |
| TPY | Tons per year |
| USEPA | U.S. Environmental Protection Agency |
| VOC | Volatile Organic Compounds |
| WMDONA | Western Mojave Desert Ozone Nonattainment Area |

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STAFF REPORT

Regulation XIII – *New Source Review* and Rule 1600 – *Prevention of Significant Deterioration*

I. PURPOSE OF STAFF REPORT

A staff report serves several discrete purposes. Its primary purpose is to provide a summary and background material to the members of the Governing Board. This allows the members of the Governing Board to be fully informed before making any required decision. It also provides the documentation necessary for the Governing Board to make any findings, which are required by law to be made prior to the approval or adoption of a document. In addition, a staff report ensures that the correct procedures and proper documentation for approval or adoption of a document have been performed. Finally, the staff report provides evidence for defense against legal challenges regarding the propriety of the approval or adoption of the document.

II. EXECUTIVE SUMMARY

The Federal Clean Air Act (FCAA) requires that states/local air districts adopt a preconstruction review program for all new and modified stationary sources of pollutants for which their jurisdiction has been classified nonattainment for the Federal Ambient Air Quality Standards (FAAQS). This review applies to “Major” sources of nonattainment air contaminants under the “New Source Review” or “Nonattainment New Source Review” (NSR or NANSR) and is implemented via of Regulation XIII – *New Source Review*. The FCAA also requires that a preconstruction review be performed on certain large stationary sources of attainment air pollutants to ensure that degradation of the air quality does not occur in areas which are currently in compliance with the FAAQS. This program is commonly referred to as “Prevention of Significant Deterioration” (PSD) and has historically been performed in the MDAQMD by the USEPA Region IX.

USEPA has recently been requesting and requiring local air districts to adopt rules and regulation such that they can implement the PSD preconstruction review process and be approved to issue PSD permits at the local level. At the same time USEPA is requiring that all local districts’ rules involving NANSR provide public notice for a significant number of so called “minor” permitting activities. Furthermore, the Federal Operating Permit Program (Title V Program) contains provisions which would, if approved by USEPA, allow NANSR, PSD and Title V permits and permit amendments to be issued simultaneously. These provisions, called “Enhanced NSR,” enable a delegated air district to cut down substantially on the notice and review time required to issue Federal Operating Permits and their amendments.

The proposed amendments to Regulation XIII – *New Source Review* (specifically Rules 1300 – *General*, 1302 – *Procedure* and 1320 – *New Source Review for Toxic Air Contaminants*) and proposed new Rule 1600 – *Prevention of Significant Deterioration* are designed to allow USEPA to delegate PSD authority, adjust the noticing requirements of NANSR to comply with recent USEPA directives regarding the noticing of “minor” source permitting activities, and to allow

the MDAQMD to request Enhanced NSR designation such that permitting activities for facilities subject to Title V may be performed concurrently. Additionally the proposed amendments and new rule adoption will clarify some provisions, provide appropriate cross-citations, and correct some minor discrepancies with USEPA requirements contained in the current rules.

The proposed amendments were recommended for approval by the Technical Advisory Committee on June 14, 2016.

III. STAFF RECOMMENDATION

Staff recommends that the Governing Board of the Mojave Desert Air Quality Management District (MDAQMD or District) amend Regulation XIII – *New Source Review* (specifically Rules 1300 – *General*, 1302 – *Procedure* and 1320 – *New Source Review for Toxic Air Contaminants*) and adopt proposed Rule 1600 – *Prevention of Significant Deterioration* and approve the appropriate California Environmental Quality Act (CEQA) documentation. This action is necessary to allow the MDAQMD to implement the Federal PSD Program and to upgrade various provisions in the existing NSR program pursuant to USEPA requirements.

IV. LEGAL REQUIREMENTS CHECKLIST

The findings and analysis as indicated below are required for the procedurally correct amendment of Regulation XIII – *New Source Review* and adoption of Rule 1600 – *Prevention of Significant Deterioration*. Each item is discussed, if applicable, in Section V. Copies of related documents are included in the appropriate appendices.

FINDINGS REQUIRED FOR RULES & REGULATIONS:

- X Necessity
- X Authority
- X Clarity
- X Consistency
- X Nonduplication
- X Reference
- X Public Notice & Comment
- X Public Hearing

REQUIREMENTS FOR STATE IMPLEMENTATION PLAN SUBMISSION (SIP):

- X Public Notice & Comment
- X Availability of Document
- X Notice to Specified Entities (State, Air Districts, USEPA, Other States)
- X Public Hearing
- X Legal Authority to adopt and implement the document.
- X Applicable State laws and regulations were followed.

ELEMENTS OF A FEDERAL SUBMISSION:

- N/A Elements as set forth in applicable Federal law or regulations.

CALIFORNIA ENVIRONMENTAL QUALITY ACT REQUIREMENTS (CEQA):

- N/A Ministerial Action
- X Exemption
- N/A Negative Declaration
- N/A Environmental Impact Report
- X Appropriate findings, if necessary.
- X Public Notice & Comment

SUPPLEMENTAL ENVIRONMENTAL ANALYSIS (RULES & REGULATIONS ONLY):

- X Environmental impacts of compliance.
- X Mitigation of impacts.
- X Alternative methods of compliance.

OTHER:

- X Written analysis of existing air pollution control requirements
- X Economic Analysis
- X Public Review

V. DISCUSSION OF LEGAL REQUIREMENTS

A. REQUIRED ELEMENTS/FINDINGS

This section discusses the State of California statutory requirements that apply to the proposed amendment of Regulation XIII and adoption of proposed Rule 1600. These are actions that need to be performed and/or information that must be provided in order to amend the rule in a procedurally correct manner.

1. State Findings Required for Adoption of Rules & Regulations:

Before adopting, amending, or repealing a rule or regulation, the District Governing Board is required to make findings of necessity, authority, clarity, consistency, non-duplication, and reference based upon relevant information presented at the hearing. The information below is provided to assist the Board in making these findings.

a. Necessity:

The proposed amendment of Regulation XIII and adoption of proposed Rule 1600 are necessary to allow the MDAQMD to officially be delegated authority to implement the Federal PSD Program and to upgrade various provisions in the existing NSR program pursuant to USEPA requirements.

b. Authority:

The District has the authority pursuant to California Health and Safety Code (H & S Code) §40702 to adopt, amend or repeal rules and regulations necessary and proper to execute the powers and duties imposed upon the District by Division 26 of the H & S Code (commencing with §39000). The District is also required to adopt and enforce rules and regulations to attain and maintain the FAAQS and SAAQS (H & S Code §40001(a)).

c. Clarity:

The proposed amendment of Regulation XIII and adoption of proposed Rule 1600 are clear in that they are written so that the persons subject to the Rule can easily understand the meaning.

d. Consistency:

The proposed amendment of Regulation XIII and adoption of proposed Rule 1600 is in harmony with, and not in conflict with or contradictory to any State law or regulation, Federal law or regulation, or court decisions in that the underlying laws and regulations require such adoption and/or have provisions allowing

for the delegation of authority to the District based upon the adoption of appropriate rules and regulations.

e. Nonduplication:

The proposed amendment of Regulation XIII and adoption of proposed Rule 1600 do not impose the same requirements as any existing State or Federal law or regulation because the underlying laws and regulations either require the adoption of implementing rules and regulations or allow such adoption for the purpose of delegation of authority for specific programs to the local level.

f. Reference:

The District has the authority pursuant to H & S Code §40702 to adopt, amend or repeal rules and regulations. The District is also required to adopt and enforce rules and regulations to attain and maintain the FAAQS and SAAQS (H & S Code §40001(a)).

g. Public Notice & Comment, Public Hearing:

Notice for the public hearing for the proposed amendment of Regulation XIII and adoption of proposed Rule 1600 was published May 27, 2016. The public hearing was opened on June 27, 2016 and continued to July 25, 2016. The July 25, 2016 meeting was canceled due to lack of quorum and the hearing was continued to August 22, 2016. See Appendix “B” for a copy of the public notice. See Appendix “C” for copies of comments, if any, and District responses.

2. Federal Elements (SIP Submittals, Other Federal Submittals).

Submittals to USEPA are required to include various elements depending upon the type of document submitted and the underlying Federal law that requires the submittal. The information below indicates which elements are required for the proposed amendment of Regulation XIII and adoption of proposed Rule 1600 and how they were satisfied.

a. Satisfaction of Underlying Federal Requirements:

The FCAA requires that certain large new or modified stationary sources of air pollutants obtain permits prior to construction or modification (42 USC §§7412(i)(1); 7475, 7502(b)(6); 7503, 7511a(a)(2)(C)). The program covering pollutants for areas designated nonattainment for that pollutant is commonly referred to as NSR or NANSR and must be included as part of the area’s State Implementation Plan (SIP). Such programs must comply with the applicable implementing regulations which are primarily

contained in 40 CFR 51.160 et seq. The program covering attainment pollutants is commonly referred to as PSD and must comply with the implementing regulations primarily contained in 40 CFR 52.21.

In addition, the FCAA requires all SIPs to contain a program to regulate the construction and modification of any stationary source such that the FAAQS are achieved and maintained (42 USC §7410(a)(2)(C)). Recent USEPA guidance has clarified that an integral part such regulation requires not only the public review of actions regarding “major stationary sources” of nonattainment air pollutants but also of so called “minor” sources.¹

The FCAA as amended in 1990 also requires a comprehensive permitting program containing all applicable requirements for permits for major sources of toxic air contaminants and nonattainment air pollutants commonly known as Federal Operating Permits (FOP) or Title V Permits (42 USC §§7661a et seq.). 40 CFR 70.7(d)(5) allows for the incorporation of preconstruction review permitting requirements as administrative permit amendments upon USEPA approval so long as the preconstruction review requirements are substantially similar to those contained in 40 CFR 70.6, 70.7 and 70.8 (Enhanced NSR).

The MDAQMD has a NANSR program contained in its Regulation XIII – New Source Review. Prior versions of this regulation have been approved into the SIP while more recent versions have been submitted as SIP revisions and are currently SIP pending. PSD preconstruction review and permit issuance has been performed by USEPA Region IX for sources within the District. The proposed amendment of Regulation XIII and adoption of proposed Rule 1600 have been designed upgrade and clarify the current NANSR program including the addition of public review requirements for so called “minor” sources of nonattainment air contaminants. In addition, these proposed changes will put in place rules and procedures to allow the MDAQMD to request delegation of the PSD program from USEPA. Furthermore, the proposed changes will upgrade the current NANSR and PSD requirements such that they are substantially similar to those contained in 40 CFR 70.6, 70.7 and 70.8 such that the MDAQMD program can be approved as “enhanced NSR” enabling Facilities with FOPs to use the administrative permit amendment process to update their Title V

¹ See USEPA Policy Memorandum “Minor New Source Review Program Public Notice Requirements under 40 CFR 51.161(b)(3)” from Janet McCabe, Principal Deputy Assistant Administrator, Office of Air and Radiation, 4/17/2012 (https://www3.epa.gov/ttn/naaqs/aqmguidance/collection/cp2/20120417_mccabe_minor_nsr_program.pdf)

permits after complying with the applicable NSR and/or PSD requirements.

In addition the proposed amendments and new rule are subject to all the requirements of a SIP submittal. A prior version of Regulation XIII is included in the SIP and the current version has been submitted and is thus considered “SIP Pending.” Both Regulation XIII and Proposed New Rule 1600 will need to be SIP approved to allow the delegation of the PSD program. The criteria for determining completeness of a SIP submission is set forth in 40 CFR 51, Appendix V, 2.0. This section of the staff report indicates how the completeness determination is satisfied.

Furthermore FCAA §110(l) (42 U.S.C. §7410(l)) requires that any SIP amendment which might potentially be construed as a relaxation of a requirement provide a demonstration that the proposed change will not interfere with any FCAA requirements concerning attainment or Reasonable Further Progress (RFP). Thirdly, California Law (H&S Code §§42500 et seq.) requires a similar analysis when amendments are proposed to a nonattainment NSR program to show that the proposed changes are not less stringent than the FCAA provisions and implementing regulations which were in existence as of December 30, 2002 (H&S Code §42504). Please see section (VI)(E) for the applicable analysis.

Finally, 40 CFR 51.1000 requires that areas not in attainment for the 2008 O³ NAAQS submit nonattainment plans or nonattainment plan revisions sufficient to meet the requirements of specified provisions of the FCAA. In lieu of a new submission a submitting entity can show that existing provisions of the plan(s) are sufficient to meet the requirements. Specifically the MDAQMD is designated nonattainment for O³ under the 2008 NAAQS and classified severe. Therefore, pursuant to the provisions of 40 CFR 51.1114 it is required to submit a nonattainment NSR plan sufficient to meet the NANSR requirements in the FCAA for such designation/classification². Since the District’s designation/classification is the same as under the previous NAAQS the current provisions of District Regulation XIII remain sufficient to meet this requirement. In addition, the proposed amendments to Regulation XIII will also clarify certain noticing provisions to ensure compliance with the FCAA requirements.

² For example severe nonattainment classifications are required to have a specified major source and major modification threshold of 25tpy for O₃ and its precursors NO_x and VOC as well as an offset ratio of 1.3:1. The current provisions of District Regulation XIII contain such requirements as well as all other FCAA requirements for severe areas.

b. Public Notice and Comment:

Notice for the public hearing for the proposed amendment of Regulation XIII and adoption of proposed Rule 1600 was published May 27, 2016. The public hearing was opened on June 27, 2016 and continued to July 25, 2016. The July 25, 2016 meeting was canceled due to lack of quorum and the hearing was continued to August 22, 2016. See Appendix “B” for a copy of the public notice. See Appendix “C” for copies of comments, if any, and District responses.

c. Availability of Document:

Copies of the proposed amendment of Regulation XIII and adoption of proposed Rule 1600 and the accompanying draft staff report were made available to the public on or before May 23, 2016. The proposed amendments were also reviewed by the Technical Advisory Committee, a committee consisting of a variety of regulated industry and local governmental entities, on June 14, 2016

d. Notice to Specified Entities:

Copies of the proposed amendment of Regulation XIII and adoption of proposed Rule 1600 and the accompanying draft staff report were sent to all affected agencies. The proposed amendments were sent to the California Air Resources Board (CARB) and U.S. Environmental Protection Agency (USEPA) on May 13, 2016.

e. Public Hearing:

A public hearing to consider the proposed amendment of Regulation XIII and adoption of proposed Rule 1600 has been set for June 27, 2016.

f. Legal Authority to Adopt and Implement:

The District has the authority pursuant to H&S Code §40702 to adopt, amend, or repeal rules and regulations and to do such acts as may be necessary or proper to execute the powers and duties imposed upon the District by Division 26 of the H & S Code (commencing with §39000). The District is also required to adopt and enforce rules and regulations to attain and maintain the FAAQS and SAAQS (H & S Code §40001(a))

g. Applicable State Laws and Regulations Were Followed:

Public notice and hearing procedures pursuant to H&S Code §§40725-40728 have been followed. See Section (V)(A)(1) above for compliance with state findings required pursuant to H&S Code §40727. See Section (V)(B) below for compliance with the required analysis of existing requirements pursuant to H&S Code §40727.2. See Section (V)(C) for compliance with economic analysis requirements pursuant to H&S Code §40920.6. See Section (V)(D) below for compliance with provisions of the CEQA.

B. WRITTEN ANALYSIS OF EXISTING REQUIREMENTS

H & S Code §40727.2 requires air districts to prepare a written analysis of all existing federal air pollution control requirements that apply to the same equipment or source type as the rule proposed for modification by the district. The proposed amendments to Regulation XIII and proposed new Rule 1600 apply to all new or modified Facilities emitting air contaminants over particular amounts as defined in the applicable rules. However, these rules are primarily procedural in nature and meant to implement specific provisions of federally mandated programs namely NANSR and PSD. They do not in and of themselves mandate specific control strategies. Instead they are used to procedurally place permit conditions upon each new or modified piece of equipment or source type to implement the specific air pollution control requirements applicable to such equipment or source type. Therefore, as rules implementing federal programs rather than providing specific control requirements, this analysis is not necessary.

C. ECONOMIC ANALYSIS

1. General

The proposed amendments to Regulation XIII and proposed new Rule 1600 are primarily modifications to existing programs. Currently all permitting operations, including NANSR reviews are funded by Rule 301 Permit Fees and the proposed amendments do not adjust these fees. The PSD program is currently implemented by USEPA. Upon adoption of the proposed amendments to Regulation XIII and proposed new Rule 1600 the District will request delegation of the PSD program. Once delegation has been provided to the District by USEPA, new or modified Facilities needing PSD analysis submitting applications would be subject to the Project Analysis Fee for Complex Sources (Complex Source Fee) pursuant to District Rule 301(C)(2). Such fees are charged as an hourly rate subtracted from a deposit. Most Facilities subject to the provisions of NANSR already pay this fee and thus the economic impact for obtaining a PSD permit will be reflected as an increase in the man hours required to issue such permit. Part of the proposed amendments to Regulation XIII will impose additional notice requirements upon certain new or modified Facilities. These Facilities do not require notice under the current rules. For those Facilities requiring notice which are already subject to the Complex Source Fee actual District cost for noticing will be passed through and charged against the deposit (Rule 301(C)(2)(e)). For other Facilities requiring

additional notice there is no such pass through fee. The District does not expect that there will be many Facilities requiring extra notice that are not already subject to the pass through fee. The District will attempt to minimize all notice costs by providing alternative notice via its website for any permit actions not rising to a certain level of significance. Certain larger Facilities holding District FOPs may see some cost savings in that publication of notice in a newspaper with its attendant pass through costs may no longer be required for some FOP permit modifications upon USEPA's approval of the District's application for Enhanced NSR designation.

2. Incremental Cost Effectiveness

Pursuant to H&S Code §40920.6, incremental cost effectiveness calculations are required for rules and regulations which are adopted or amended to meet the California Clean Air Act (CCAA) requirements for Best Available Retrofit Control Technology (BARCT) or "all feasible measures" to control volatile compounds (VOCs), oxides of nitrogen (NOx) or oxides of sulfur (SOx). The proposed amendments to Regulation XIII and proposed new Rule 1600 as procedural rules do not require specific control measures on particular types of equipment and thus this analysis is not required.

This analysis is primarily intended for source specific prohibitory rules rather than procedural rules. However, the proposed amendments and new rule do require Best Available Control Technology (BACT) to be placed upon certain new or modified emissions units. While this might technically be considered the imposition of BARCT or "all feasible measures" the specific controls required for a particular piece of equipment will need to be analyzed on a case by case basis as applications are submitted. The particular equipment involved in each application will be subject to the provisions of the applicable State, Federal and/or District rules governing the particular source category involved. Due to the necessity of an application to specify BACT this analysis, if such is even applicable, is too speculative to be performed at this time. Please note the imposition of specific BARCT or "all feasible measures" by any new or modified prohibitory rule will require an incremental cost analysis upon adoption/amendment.

D. ENVIRONMENTAL ANALYSIS (CEQA)

Through the process described below the appropriate CEQA process for the proposed amendments to Regulation XIII and proposed new Rule 1600 was determined.

1. The proposed amendments to Regulation XIII and proposed new Rule 1600 meet the CEQA definition of "project". They are not "ministerial" actions.
2. The proposed amendments to Regulation XIII and proposed new Rule 1600 are exempt from CEQA Review because the proposed action is the amendment/adoption of procedural rules designed to protect the environment. Specifically, the proposed amendment of Regulation XIII increases protections in

that it provides for additional agency and public review of a greater number of new or modified Facilities. In addition, the amendments and proposed new Rule 1600 are designed to allow the delegation of a currently existing program, PSD, from USEPA to the District will all the specific requirements and protections which currently exist intact. Therefore, there is no potential that the proposed amendments and new rule might cause the release of additional air contaminants or create any other adverse environmental impacts, a Class 8 Categorical Exemption (14 Cal. Code Reg. §15308) applies.

Copies of the documents relating to CEQA can be found in Appendix “D”.

E. SUPPLEMENTAL ENVIRONMENTAL ANALYSIS

1. Potential Environmental Impacts

The potential environmental impacts of compliance with the proposed amendments to Regulation XIII and proposed new Rule 1600 should not have any additional environmental consequences. The proposed amendments and adoption of new rule are primarily procedural in nature and are designed to enhance the review of various new and modified Facilities under the existing NANSR and PSD programs and to transfer the responsibility of the latter to the District. These programs do not impose specific requirements on specific sources or source categories. Instead they require compliance with other source specific rules and regulations as well as requiring compliance with particular measures such as BACT. As procedural rules the specific application of the requirements is highly dependent upon the nature and type of the application submitted for a new or modified Facility. Thus, analysis of specific potential impacts regarding a particular project is too speculative to be performed in this particular instance.

In addition, it must be noted that any new or modified Facility will in and of itself be required to undergo CEQA review when proposed thus specific potential environmental impacts caused by the imposition of requirements such as BACT will be analyzed at that time.

2. Mitigation of Impacts

N/A

3. Alternative Methods of Compliance

N/A

F. PUBLIC REVIEW

See Staff Report Section (V)(A)(1)(g) and (2)(b), as well as Appendix “B”

VI. TECHNICAL DISCUSSION

A. SOURCE DESCRIPTION

The proposed amendments to Regulation XIII and proposed new Rule 1600 will affect in part any application for a new or modified permit in the MDAQMD in that Rule 1302 – Procedure governs all applications and ensures that all appropriate analyses are performed prior to permit issuance. Exactly which analyses are applicable to a particular Facility or Emissions Unit are based upon the proposed type and quantity of emissions produced.

1. Nonattainment NSR Thresholds

The nonattainment NSR thresholds are not changed by the proposed amendments to Regulation XIII. The MDAQMD's Federal nonattainment designation have not changed since Regulation XIII was last amended in 2001 and 2006 despite the recent amendments to the National Ambient Air Quality Standards (NAAQS). The MDAQMD is still designated Federal nonattainment for Ozone (O₃) over part of its jurisdiction.³ The MDAQMD is also federally nonattainment for PM₁₀ in the San Bernardino County portion of the District. For California Ambient Air Quality Standards (CAAQS) the District is nonattainment for O₃ and PM₁₀ district-wide; and PM_{2.5} within the FONA. Thus, the nonattainment pollutants of concern for both Federal and State purposes remain O₃ and its precursors NO_x and VOC;⁴ as well as PM⁵. The threshold levels and requirements as they currently exist are summarized in Table 1.

Table 1
Existing Nonattainment NSR Thresholds and Requirements

| Source Type | Criteria | Requirements |
|--|---|---|
| New Minor Facility | Proposed Emissions < 25 tpy of NO _x /VOC; < 15 tpy PM ₁₀ . | BACT on all new/modified equipment with proposed nonattainment emissions >25 lbs/day. |
| Minor Facility with small modification | Proposed Emissions as modified < 25 tpy of NO _x /VOC; < 15 tpy of PM ₁₀ . | BACT on all new/modified equipment with proposed nonattainment emissions >25 lbs/day. |

³ The Western Mojave Desert Ozone Nonattainment Area (WMDONA) is roughly co-terminus with the boundary of Greater Los Angeles Metropolitan Statistical Area and is commonly referred to by the District as the Federal Ozone Nonattainment Area (FONA) as defined and designated in 40 CFR 81.305.

⁴ VOC is referred to as Reactive Organic Compounds for throughout Regulation XIII (See Rule 1301(XX)) due to minor historical differences between the Federal definition as found in 40 CFR 51.100(s) and 17 Cal. Code Reg. §94508(a)(90).

⁵ The District is State nonattainment for H₂S in the Searles Valley Portion of the District however as there are so few sources in that particular area the requirements have been omitted from Table 1.

| Source Type | Criteria | Requirements |
|---|---|---|
| Minor Facility with a Major Modification (<i>Note: Can't occur in the MDAQMD because a "Significant" increase as defined in 1301(DDD) would by definition make the facility a Major Facility</i>) | Proposed Emissions as modified < 25 tpy of NO _x /VOC; < 15 tpy of PM ₁₀ and increase is "Significant." | BACT on all new/modified equipment with proposed nonattainment emissions >25 lbs /day. Nonattainment Area: Offset all current and proposed nonattainment emissions for which facility is major at applicable ratio in 1305(C). Unclassified Area: Offset emissions over threshold at applicable ratio in 1305(C) |
| Minor Facility with modification that makes it Major. | Proposed Emissions as modified > 25 tpy of NO _x /VOC; > 15 tpy of PM ₁₀ | BACT on all new/modified equipment with proposed nonattainment emissions >25 lbs /day. Nonattainment Area: Offset all current and proposed nonattainment emissions for which facility is major at applicable ratio in 1305(C). Unclassified Area: Offset emissions over threshold at applicable ratio in 1305(C) |
| New Major Facility | Proposed Emissions as modified > 25 tpy of NO _x /VOC; > 15 tpy of PM ₁₀ | BACT on all new/modified equipment with proposed nonattainment emissions >25 lbs /day. Offset nonattainment emissions for which facility is major at applicable ratio in 1305(C) |
| Major Facility with any sized modification. | Proposed Emissions as modified > 25 tpy of NO _x /VOC; > 15 tpy of PM ₁₀ | BACT on all new equipment and on all modified equipment with proposed nonattainment emissions >25 lbs /day. Offset increased nonattainment emissions for which facility is major at applicable ratio in 1305(C) |

Please note that since Regulation XIII nonattainment NSR requirements impact both Federal and State nonattainment pollutants that the requirements may be somewhat different dependent upon exactly which pollutant is emitted and the location of the new or modified Facility. This means that certain pollutants in certain locations will be subject to the provisions of nonattainment NSR as well as Federal PSD requirements if the proposed emissions are large enough. Specifically the affected pollutants/locations are:

- a. O₃ and its precursors (NO_x and VOC) located outside the FONA.
- b. PM₁₀ in Riverside County
- c. PM_{2.5} inside the FONA
- d. H₂S in the Searles Valley Planning Area (SVPA)

- e. NO_x and VOC as PM₁₀ and PM_{2.5} precursors

2. Toxic Air Contaminant (TAC) NSR Thresholds

The thresholds triggering TAC analysis found in current Rule 1320 are likewise not changed by the proposed amendments to Regulation XIII. The applicability threshold for a Federal Maximum Achievable Control Technology (MACT) determination remains as follows:

- a. New/modified emissions unit which emits or has the potential to emit 10 tpy or more of a single Hazardous Air Pollutant (HAP); or
- b. New/modified emissions unit which emits or has the potential to emit 25 tpy or more of any combination of HAPs; or
- c. A new/modified facility or emissions unit which has been designated an Air toxic Area Source by USEPA.

The State portions of Rule 1320 are likewise unchanged and are dependent upon the level of risk posed by the particular pollutant emitted consistent with the requirements of the Air Toxic “Hot Spots” program (H&S Code §§44300 et seq.)

3. Prevention of Significant Deterioration (PSD) Thresholds

The proposed amendments to Regulation XIII, specifically the proposed changes to Rule 1302 – *Procedure* provide for an analysis to determine the applicability of the PSD program to a particular new or modified facility. Proposed new Rule 1600 adopts the PSD applicability thresholds set forth in 40 CFR 52.21 by reference. Thus the thresholds will remain the same as the current program administered by USEPA Region IX. These thresholds are as follows:⁶

- a. A Major PSD Facility⁷ belonging to one of the categories listed in FCAA §169 (42 U.S.C. §7479)⁸ emitting or having the potential to emit 100 tpy or more of a PSD Air Pollutant⁹.
- b. A Major PSD Facility not belonging to one of the 28 categories emitting or having the potential to emit 250 tpy or more of a PSD Air Pollutant.
- c. A new Facility which is a Major PSD Facility for at least one PSD Air Pollutant and has a “significant”¹⁰ emissions increase for any other PSD Air Pollutant.

⁶ The thresholds listed here are primarily for general reference only. Specific applicability will need to be determined upon a case by case basis.

⁷ To avoid terminology confusion with existing District rules, Rule 1600(B)(6) defines Major PSD Facility as a “Major Stationary Source” pursuant to 40 CFR 52.21(b)(1).

⁸ See also 40 CFR 51.166(b)(1)(iii) and 40 CFR 52.21(b)(1)(iii) which includes the “catch all” provisions for stationary sources regulated under FCAA §§111 and 112 (42 U.S.C. §§7411 and 7412).

⁹ To avoid terminology confusion with existing District rules, Rule 1600(B)(9) defines PSD Air Pollutant as “Regulated Air Pollutant” pursuant to 40 CFR 52.21(b)(50). In general this means any attainment air pollutant and its precursor.

¹⁰ The list of “significant” amounts by pollutant may be found in 40 CFR 52.21

- d. A modified Facility which is an existing Major PSD Facility when both the potential increase in emissions **and** the resulting net emissions increase for PSD Pollutants are “significant.”

An emissions increase is “significant” as indicated in the following table:

Table 2
PSD Significant Emissions Thresholds¹¹

| Pollutant | Emissions Rate | Pollutant | Emissions Rate |
|---|-----------------------|---|---|
| CO | 100 tpy | Sulfuric acid mist | 7 tpy |
| NO _x | 40 tpy | H ₂ S | 10 tpy |
| SO _x | 40 tpy | Total Reduced Sulfur (Including H ₂ S) | 10 tpy |
| PM | 25 tpy | Reduced Sulfur Compounds (Including H ₂ S) | 10 tpy |
| PM ₁₀ | 15 tpy | Municipal waste combustor organics ¹² | 3.2×10^{-6} megagrams per year (3.5×10^{-6} tons per year) |
| PM _{2.5} (Direct) | 10 tpy | Municipal waste combustor metals ¹³ | 14 megagrams per year (15 tpy) |
| PM _{2.5} (NO _x or SO _x precursor ¹⁴) | 40 tpy | Municipal waste combustor acid gases ¹⁵ | 36 megagrams per year (40 tpy) |
| O ₃ (NO _x or VOC precursor) | 40 tpy | Municipal solid waste landfill emissions ¹⁶ | 40 megagrams per year (50 tpy) |
| Pb (Lead) | 0.6 tpy | Any PSD Regulated Air Pollutant within 10K of Class 1 area. | Having an impact of > 1 microgram per m ³ (24 hour average) |
| Fluorides | 3 tpy | | |

4. Notice Thresholds

The proposed amendments to Regulation XIII, specifically 1302 – *Procedure* add a new level of noticing to comply with recent USEPA guidance regarding the noticing of “minor source” permitting activities. An analysis justifying the threshold levels for such minor source notice is provided in Section (VI)(D). In addition, the proposed amendments to the noticing requirements will upgrade the current provisions such that sources with FOPs may, after undergoing Enhanced nonattainment NSR and/or PSD review for a modification, amend the FOP as an

¹¹ See 40 CFR 52.21(b)(23) for a more complete explanations of pollutant components and amounts

¹² Measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.

¹³ measured as particulate matter.

¹⁴ Unless such NO_x or SO_x emissions are demonstrated not to be a PM_{2.5} precursor pursuant to 40 CFR 52.21(b)(50).

¹⁵ Measured as sulfur dioxide and hydrogen chloride

¹⁶ measured as nonmethane organic compounds

administrative permit amendment once USEPA has approved the Rule as “Enhanced NSR” for Title V purposes. The proposed amendments to Regulation XIII will require the level of notice as indicated in the following table:

Table 3
Notice Thresholds and Notice Type

| Permitting Action | Notice Type |
|---|--------------------|
| Is a modification at a Title V Facility | Full Notice |
| Requires Offsets pursuant to 1303(B) | Full Notice |
| Occurs at a new or Modified Federal Major Facility under 1310 | Full Notice |
| Is a new PSD Major Facility or PSD Major Modification | Full Notice |
| Applicant would like to run 1320 required notice concurrently to other NSR/PSD notices. | Full Notice |
| Simultaneous Emissions Reductions (SERs) are used to reduce Potential To Emit (PTE) in a “net out” transaction | Website Notice |
| Minor facility proposed emissions change is > 80% of the HAP threshold for Title V applicability in 1201(S)(1)(c) or (S)(2)(b). | Website Notice |
| Minor Facility proposed emissions change is > 80% of the Nonattainment Air Pollutant Major Facility Threshold Amount in 1303(B) | Website Notice |
| Minor Facility proposed emissions change is > the “Significance” level for PSD Air Pollutant ¹⁷ | Website Notice |
| Minor Facility not covered above. | Minimal Notice |

Full notice requires a specified set of notice contents as set forth in Proposed amended 1302(D)(3)(a)(iii) including notice of the right to request a hearing regarding the proposed permitting action. It also requires the following actions to be taken:

- a. *Send copy of Preliminary Decision and any underlying analysis to:* USEPA, CARB, and Affected States (within 50 miles).
- b. *Publish in newspaper* (providing a 30 day comment period)
- c. *Send copy of notice to:* USEPA, CARB, Affected States (within 50 miles – includes adjoining air districts), City where located, County where located, State Land manager of potentially affected lands, Federal land manager of potentially affected lands, Indian governing body of potentially affected lands, anyone who has requested notice with Clerk of the Board.
- d. *Publish notice on website*

Website notice requires a slightly different set of notice contents and requires the following actions:

- a. *Publish notice on website*

¹⁷ See Table 2 for Significance amounts.

- b. *Send a copy of notice to:* USEPA, CARB, Affected States (within 50 miles – includes adjoining air districts) and anyone who has requested notice with Clerk of the Board.

Minimal notice would require notice to anyone who has requested notice of permitting actions regarding the particular Facility with the Clerk of the Board.

Please note that the California Public Records Act requires disclosure of any non-confidential documents regarding any permitting actions upon request.

B. EMISSIONS

The proposed amendments to Regulation XIII and Proposed New Rule 1600 are not expected to change emissions reductions from those achieved under the current nonattainment NSR program and the USEPA administered PSD program. Since these rules apply to new and modified Facilities or Emissions Units it is impossible to quantify specific emissions reductions since such reductions are entirely dependent upon the applications submitted and cannot be quantified in advance.

C. CONTROL REQUIREMENTS

The proposed amendments to Regulation XIII and proposed new Rule 1600 clarify which new or modified Facilities and/or Emissions Units require what level of control requirements. These levels are not changed from those currently in Regulation XIII and are the same as those currently imposed by the USEPA administered PSD Program.

D. MINOR SOURCE THRESHOLD ANALYSIS

As a part of the rule development process an analysis was performed to determine what the proposed minor source notice thresholds represent in terms of their contribution to the emissions inventory of the MDAQMD. Under the proposed notice thresholds the sources which will receive minimal notice will average about 4% of the total MDAQMD emissions inventory. This amount is not large enough to affect the MDAQMD's ability to attain or maintain the NAAQS. This is primarily due to the following: the MDAQMD is overwhelmingly impacted by transported pollution from both the South Coast Air Basin and the San Joaquin Air Basin; the nonattainment design values for the MDAQMD are highest at the upwind district boundary, namely Phelan and Hesperia; there are no permitted facilities within the MDAQMD which impact those monitors; monitors which are affected by permitted facilities, namely Barstow, have shown a distinct downward trend over the years and meet the current NAAQS. Therefore it is reasonable to assume that the sources receiving minimal notice will have no effect upon the attainment or maintenance of the NAAQS

Please also note that applicability of the notice requirements would be determined using estimated PTE for pollutants as set forth in applications received by the District. In general, the MDAQMD has found that actual emissions are significantly lower than estimated PTE. Therefore the MDAQMD fully expects that the actual percentage of inventory not receiving notice will be quite a bit less than this analysis indicates.

Table 4
Public Notice Threshold Analysis
(numerical values in tpy)

| | VOC | NO _x ¹⁸ | PM ₁₀ | CO | Pb | PM _{2.5} ¹⁹ (direct) | SO _x |
|--|--------|-------------------------------|------------------|--------|------|---|-----------------|
| 1. Proposed Minor NSR Notice Threshold. | 20 | 20 | 12 | 100 | 0.6 | 10 | 40 |
| 2. Federal Nonattainment Major Source Threshold. | 25 | 25 | 15 ²⁰ | N/A | N/A | N/A | N/A |
| 3. Proposed Minor NSR Notice Threshold as % of Federal Major Source Threshold (Line 1/Line2). | 80% | 80% | 80% | N/A | N/A | N/A | N/A |
| 4. Actual emissions from Permitted Units (2013 Emissions Inventory). | 3,351 | 18,735 | 9,475 | 3,858 | 5 | 3,997 | 1,573 |
| 5. Actual emissions from Permitted Actions which would require full or website notice. ²¹ | 1,453 | 18,173 | 7,216 | 3,577 | 5 | 3,595 | 1,544 |
| 6. Emissions not subject to notice. | 1,898 | 562 | 2,259 | 281 | 0 | 402 | 29 |
| 7. Total Emissions Inventory for 2013. | 13,826 | 42,019 | 31,719 | 68,051 | 265 | 8,428 | 1,730 |
| 8. Permitted inventory as % of total inventory emissions (Line 4/Line 7). | 24% | 45% | 30% | 6% | 2% | 47% | 91% |
| 9. Permitted inventory not subject to notice as % of total inventory emissions (Line 6/Line 7). | 14% | 1% | 7% | 0.4% | 0% | 5% | 2% |
| 10. Permitted inventory subject to notice as % of total permitted emissions (Line 5/Line 4) | 43% | 97% | 76% | 93% | 100% | 90% | 98% |

E. FCAA §110(l), FCAA §193, AND HEALTH & SAFETY CODE §42504
ANALYSIS

FCAA §110(l) (42 U.S.C. §7410(l)) requires that any SIP amendment which might potentially be construed as a relaxation of a requirement provide a demonstration that the

¹⁸ As an attainment pollutant NO₂ would, pursuant to the proposed notice levels (See Table 3) be required to notice any increase > 40 tpy. Since NO₂ is a subset of NO_x which has a lower threshold as a practical matter any increase of NO₂ > 20 tpy would be required to be noticed.

¹⁹ PM_{2.5} is State nonattainment for the FONA and does not have or require a state major source threshold pursuant to Division 26 of the H&S Code and is not on the list in 1303(B) therefore it will be treated for purposes of notice as an attainment pollutant and be noticed if the emissions change is > the Significance threshold for PSD purposes.

²⁰ The Federal Major Source Threshold for PM₁₀ in the MDAQMD is 100 tpy however the SIP approved offset threshold is 15 tpy (as amended in 1993 down from 45 tpy pursuant to the original 1980 version).

²¹ Includes: Actions with emissions increases > Proposed Minor NSR Notice Threshold, actions which used SER's to reduce PE, actions requiring offsets under 1303(B), Facilities subject to Rule 1310, and modifications at Facilities with FOPs.

proposed change will not interfere with any FCAA requirements concerning attainment or Reasonable Further Progress (RFP). FCAA §193 (42 U.S.C. §7515) also requires that any relaxation of a control requirement in effect in a nonattainment area before November 15, 1990 may not be modified without ensuring the provision of equivalent emissions reductions²². In addition, California Law (H&S Code §§42500 et seq.) requires a similar analysis when amendments are proposed to a nonattainment NSR program to show that the proposed changes are not less stringent than the FCAA provisions and implementing regulations which were in existence as of December 30, 2002 (H&S Code §42504).

The proposed amendments to Regulation XIII and the adoption of new Rule 1600 do not relax any NSR related requirements. Proposed new Rule 1600 adopts the provisions of 40 CFR 52.21 by reference and thus will result in the same requirements as currently imposed under USEPA Region IX's implementation of the PSD program. Similarly the proposed amendments to Regulation XIII primarily clarify existing requirements, codify existing practices and reorganize the procedures to allow the issuance of PSD permits in conjunction with nonattainment NSR permits. The proposed amended noticing requirements will result in more permits being subject to public notice than under the current regulation. No changes have been made to relax any of the requirements listed in H&S Code 42504(b). For explanation of the changes in general please see Section (VI)(F) and for specifics regarding particular amendments please see the *[bracketed italicized]* notes in Appendix A.

F. PROPOSED RULE SUMMARY

This section gives a brief overview of the proposed amendments to Regulation XIII and adoption of new Rule 1600. For more specific information regarding proposed changes please see the *[bracketed italicized]* notes in Appendix A.

1. Proposed New Rule 1600

Rule 1600(A)(1) – This section sets forth the purposed of the proposed new rule specifically that the rule is intended to allow for the review and issuance of PSD permits and to incorporate the provisions of 40 CFR 52.21 by reference.

Rule 1600(A)(2) – This section sets forth the applicability of the PSD program primarily by reference. It also contains exclusions for pollutants which are covered under the District's nonattainment NSR permitting requirements, namely nonattainment pollutants.

Please note: portions of the District are Federal nonattainment for O₃ and PM₁₀ thus the major pollutants excluded from applicability are NO_x and VOC within the FONA and PM₁₀ districtwide except Riverside County. It must be noted, however, that certain PSD pollutant precursors also happen to be precursors for certain Federal Nonattainment Pollutants. Specifically NO_x is an O₃ precursor but

²² NSR provisions have been held to be "control requirements" under the FCAA. See *Hall v. EPA* 273 F.3d 1146 (9th Cir. 2001) and *SCAQMD v. EPA* 472 F.3d 882 (D.C. Cir, 2006).

also a PM₁₀ and PM_{2.5} precursor. Thus, NO_x may be subject to both a nonattainment NSR analysis and a PSD analysis.

Rule 1600(A)(3) – This section contains the incorporation by reference of 40 CFR 52.21 with certain exclusions. The exclusions were negotiated with USEPA during the development of the California Air Pollution Control Officer's Association (CAPCOA) Model PSD Rule. Language is also included that allows the MDAQMD specific terminology to be used.

Rule 1600(B) – This section provides that the definitions contained in 52.21(b) will apply with minor exceptions and changes in terminology specific to the MDAQMD. Certain definitions (Administrator, APCO and District) are provided to allow delegation of certain functions in the PSD permitting process to the District. Other definitions (ATC, PTO, Permit Unit and PSD Document) are included to conform the PSD issuance process terminology with existing MDAQMD permit issuance procedures. A variety of definitions (Major PSD Facility, Major PSD Modification, PSD Air Pollutant, and PSD BACT) are included to avoid confusion between PSD program items and nonattainment NSR program items as the definitions and calculations involved for each program are occasionally different.

Rule 1600(C) – This section sets forth the requirements mandating that Facilities to which the rule is applicable are required to obtain a PSD permit.

Rule 1600(D) – This section cross references general procedural items to District Rule 1302. This allows a common permit issuance procedure to be used across all preconstruction review activities. It also provides a cross reference to District Rule 1306 for power plants which are subject to licensing by the California Energy Commission (CEC). Procedures which are specific to the PSD program are set forth and cross references allowing PSD permit issuance to utilize the permit issuance procedures provided by District Rule 1302 are provided.

Please Note: In the MDAQMD anything that emits air contaminants is required to get a permit pursuant to District Rules 201 and 203 unless the particular emissions unit is exempt under District Rule 219. Any time an emissions unit is added or modified an application is required for an Authority to Construct (ATC). All applications, regardless of Permit Unit size, are subject to the procedural requirements of Rule 1302. Use of the procedures in 1302 ensures that the initial completeness criteria and applicability of certain requirements are determined properly and that nothing is missed. If the resultant permit action is too small to trigger major source (Nonattainment NSR Major Facility, PSD Major Facility or uses SER's to reduce PE below that level) then the permit acquires BACT and/or Toxic NSR conditions if necessary and "drops out" to a simple permit issuance under Reg. II. Otherwise, the permitting will issue using the 1302 procedures .

2. Proposed Amendments to Rule 1300

Rule 1300(A)(1) – The proposed amendments correct a typographical error in subsection (b) and provide new subsection (e) to allow the PSD analysis and issuance requirements to be added into District Rule 1302.

Rule 1300(C)(1)(a) – A change of cross reference from “Rule” meaning a single Rule to “Regulation” meaning a numbered chapter containing multiple rules is provided for clarity.

Rule 1300(D)(1)(a) – Correction of a typographical error is provided.

Rule 1300(D)(2) – The proposed amendment provides a cross reference to proposed new Rule 1600

3. Proposed Amendments to Rule 1302

In general Rule 1302 is structured to apply to all application for new or modified Facilities regardless of size. It is intended to insure that all analysis and procedural elements are performed and not inadvertently missed by either the applicant or the District. In many ways this rule is a verbal representation of a flow chart and while it contains procedural mandates it is not intended to set forth the specific requirements including but not limited to BACT, Offsets, or MACT limits which may apply to a particular permitting action. The specific requirements are generally provided in other rules which are cross referenced throughout. Please see Appendix E for a detailed flow chart representation of the 1302 procedural process.

Rule 1302(A) – This provision has been revised for clarity at USEPA’s suggestion.

Rule 1302(B)(1) – The amendments to this section are designed to clarify exactly what information is required in an application for a specific type of new or modified facility. Historically any information not specifically listed in the current rule formulation was requested as needed under the existing “catch all” provision. Additional specificity regarding general application elements has been placed in subsection (B)(1)(a)(i) along with a requirement for a PSD applicability analysis. The requirements for Facilities requiring offsets have been streamlined and grouped into subsection (B)(1)(a)(ii) with requirements for Federal Major Facility analysis required pursuant to Rule 1310 since the thresholds and information required are almost identical. Subsection (B)(1)(a)(iii) has been modified and streamlined to specify requirements specific to Facilities which may affect a Mandated Class 1 Federal Area (specified parks and wilderness areas). Likewise subsection (B)(1)(a)(iv) has been modified to indicate specific information required to issue a Plantwide Applicability Limit if such is requested by the applicant. Subsection (B)(1)(a)(v) has been added to require specific application information for those Facilities subject to the PSD provisions of Rule

1600. The completeness determination deadline found in subsection (B)(1)(b) remains the same.

Rule 1302(B)(2) – This subsection has been reorganized to improve flow, add cross references to PSD provisions and correct cross references.

Rule 1302(B)(3) – A typographical error has been corrected here and a cross reference provided pursuant to USEPA suggestion.

Rule 1302(B)(4) – A punctuation error is proposed for correction.

Rule 1302(C) – This section is the portion of the rule containing the majority of the “flow chart” elements. It has been extensively modified and reorganized to create a series of “if/then” requirements to insure that all analysis applicable to a particular proposed permitting activity are performed and that particular requirements are included in the resultant permits. Please see the *[bracketed italicized]* notes in Appendix A for justifications of specific modifications, movements and other explanations. Please see the flow chart provided in Appendix E for a visual representation as to how this section will work in practice.

Rule 1302(D) – This section sets forth the procedural issuance process. Subsection (D)(1) has a minor terminology change and an added provision allowing PSD permits to be issued in conjunction with nonattainment NSR permitting actions. Subsection (D)(2) is modified to clarify and specify the agencies which specifically need to be provided copies of the preliminary decision and underlying documentation as well as what to do when such agencies provide comments. In practice the District has been providing such document to the specified agencies. Subsection (D)(3) has been modified to conform with the noticing requirements for the PSD program as well as specific requirements from the nonattainment NSR program and the Title V FOP program. The specific underlying provisions for each requirement may be found in the *[bracketed italicized]* notes in Appendix A. Subsections (D)(4) and (5) are clarified by providing appropriate cross references. In addition provisions are added to cross reference PSD program requirements. Subsection (D)(6) remains primarily unchanged.

4. Proposed Amendments to Rule 1320

The proposed amendments to Rule 1320 primarily correct typographical errors and conform citation cross references to the proposed changes in Rule 1302.

G. SIP HISTORY

1. SIP History.

a. SIP in the San Bernardino County Portion of MDAQMD

The initial version of Regulation XIII was adopted on July 21, 1980 by the San Bernardino County Air Pollution Control District (SBCAPCD) and consisted of Rules 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1310, 1311 and 1313. It was submitted as a SIP revision and approved by USEPA on June 9, 1982 (47 FR 25013; 40 CFR 52.220(c)(87)(iv)(A); See also 40 CFR 52.232(a)(13)(i)(A)).

On July 1, 1993 the MDAQMD was formed pursuant to statute. Pursuant to statute it also retained all the rules and regulations of the SBCAPCD until such time as the Governing Board of the MDAQMD wished to adopt, amend or rescind such rules. The MDAQMD Governing Board, at its very first meeting, reaffirmed all the rules and regulations of the SBCAPCD.

On October 27, 1993 the Governing Board amended various rules in Regulation XIII. This version was submitted as a SIP revision but no action was taken by USEPA. On March 25, 1996 the MDAQMD completely reorganized the regulation such that it now consisted of Rules 1300, 1301, 1302, 1303, 1304, 1305 and 1306. This version was submitted and approved by USEPA on November 13, 1996 (61 FR 58113; 40 CFR 52.220(c)(239)(i)(A)). The Governing Board adopted further amendments and added an additional rule 1320 – *New Source Review for Toxic Air Contaminants* on September 24, 2001. These amendments were submitted as a SIP revision but no action was taken by USEPA. On August 28, 2006 the MDAQMD again amended various rules in Regulation XIII this time adding Rule 1310 – *Federal Major Facilities and Federal Major Modifications*. Once again these amendments were submitted as a SIP revision but no action was taken by USEPA.

Since State Implementation Plan (SIP) revisions in California are adopted by USEPA as effective in areas which happen to be defined by both air basin designations and the jurisdictional boundaries of local air districts within those air basins, the MDAQMD “inherited” the SBCAPCD SIP which was in effect for what is now called the San Bernardino County Portion of Mojave Desert Air Basin (MDAB). Therefore the March 25, 1996 version of Regulation XIII is the version contained in the SIP for the San Bernardino County portion of the MDAB.

b. SIP in the Riverside County (Blythe/Palo Verde Valley) Portion of the MDAQMD

One of the provisions of the legislation which created the MDAQMD allowed areas contiguous to the MDAQMD boundaries and within the same air basin to leave their current air district and become a part of the MDAQMD. On July 1, 1994 the area commonly known as the Palo Verde Valley in Riverside County, including the City of Blythe, left the South Coast Air Quality Management District (SCAQMD) and joined the MDAQMD.

Since USEPA adopts SIP revisions in California as effective within the jurisdictional boundaries of local air districts, when the local boundaries change the SIP as approved by USEPA for that area up to the date of the change remains as the SIP in that particular area. Upon annexation of the Blythe/Palo Verde Valley the MDAQMD acquired the SIP prior to July 1, 1994 that was effective in the Blythe/Palo Verde Valley. Therefore, the SIP history for the Blythe/Palo Verde Valley Portion of the MDAQMD is based upon the rules adopted and approved for that portion of Riverside County by SCAQMD.

The SCAQMD initial version of Regulation XIII was adopted on October 5, 1979 and consisted of Rules 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1310, 1311, 1312 and 1313. SCAQMD thereafter amended various portions of Regulation XIII on March 7, 1980 and July 11, 1980. These versions were submitted as a SIP revision and approved by USEPA on January 21, 1981 (46 FR 5965; 40 CFR 52.220(c)(68)(i) and (70)(i)(A)). Additional approval was granted on June 9, 1982 (47 FR 25013; 40 CFR 52.220(c)(87)(v)(A)). On September 10, 1982 Rules 1309 and 1309.1 regarding offset banking were added to the regulation. SCAQMD continued to amend Regulation XIII in whole and in part over the years. Action was taken on July 12, 1985, January 10, 1986, August 1, 1986, December 2, 1988, June 28, 1990, May 3, 1991, June 5, 1992 and September 11, 1992. These amendments were presumably submitted as SIP revisions but USEPA had taken no action as of July 1, 1994 when the Blythe/Palo Verde Valley area of the MDAQMD.

The March 25, 1996 reorganization of Regulation XIII applied in the Blythe/Palo Verde Valley of the MDAQMD. The reorganized regulation was submitted and approved by USEPA on November 13, 1996 (61 FR 58113; 40 CFR 52.220(c)(239)(i)(A)) and thus superseded the prior SCAQMD SIP version for the area. The MDAQMD Governing Board adopted further amendments and

added an additional rule 1320 – *New Source Review for Toxic Air Contaminants* on September 24, 2001. These amendments were submitted as a SIP revision but no action was taken by USEPA. On August 28, 2006 the MDAQMD again amended various rules in Regulation XIII this time adding Rule 1310 – *Federal Major Facilities and Federal Major Modifications*. Once again these amendments were submitted as a SIP revision but no action was taken by USEPA. Therefore, the version in the SIP for the Blythe/Palo Verde Valley area is the same as the version in effect in the San Bernardino County portion of the MDAB.

Since Proposed Rule 1600 is new it does not have a SIP history for either San Bernardino or Riverside County.

2. SIP Analysis.

The District will request CARB to submit the proposed amendments to Regulation XIII and proposed new Rule 1600 to replace the SIP versions in effect in the San Bernardino County portion of the MDAB and the Blythe/Palo Verde Valley portion of Riverside County. This submission is necessary to update the nonattainment NSR program, allow USEPA to delegate the PSD program to the MDAQMD and to allow USEPA to designate Regulation XIII as “enhanced NSR” for purposes of the Title V program.

Since there are previously existing SIP rules for this category the District will request that they be superseded. In order to replace existing SIP rules the District is required to show that the proposed amendments are not less stringent than the provisions currently in the SIP. The proposed amendments and new rule add additional provisions to the program, clarify existing provisions, codify current practices and in general strengthen the entire regulation. The addition of enhanced noticing requirements will result in more Facilities, even those not rising to the emissions level of a Major Source, to be subject to public review and comment. For explanation of the changes in general please see Section (VI)(F) and for specifics regarding particular amendments please see the *[bracketed italicized]* notes in Appendix A.

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Appendix “A”
Proposed Amendments to Regulation XIII
(Rules 1300, 1302, and 1320)
and Proposed New Rule 1600 Iterated Version(s)

The iterated version is provided so that the changes to an existing rule may be easily found. The manner of differentiating text is as follows:

1. Underlined text identifies new or revised language.
2. ~~Lined-out text~~ identifies language which is being deleted.
3. Normal text identifies the current language of the rule which will remain unchanged by the adoption of the proposed amendments.
4. *[Bracketed italicized text]* is explanatory material that is not part of the proposed language. It is removed once the proposed amendments are adopted.

For a new rule all text will be normal. *[Bracketed italicized text]* is explanatory material that is not part of the proposed language and will be removed upon adoption

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Rule 1600

Prevention of Significant Deterioration (PSD)

(A) General

(1) Purpose

(a) The purpose of the Rule is to:

- (i) Set forth the requirements for preconstruction review of all new Major PSD Facilities and Major PSD Modifications which emit or have the potential to emit a PSD Air Pollutant; and *[CAPCOA Model PSD Rule 10/25/11 – Purpose: sentence 1. Revised to avoid conflict with NSR terms.]*
- (ii) Incorporate applicable provisions of the Federal Prevention of Significant Deterioration (PSD) Rule as found in 40 CFR 52.21 by reference; and *[CAPCOA Model PSD Rule 10/25/11 – Purpose sentence 3]*
- (iii) Ensure that the construction or modification of Facilities subject to this Rule comply with the provisions of 40 CFR 52.21 as incorporated by reference in this Rule. *[Implied by CAPCOA Model PSD Rule]*

(2) Applicability

- (a) This Rule is applicable to any Facility and the owner/operator of any Facility subject to any requirement pursuant to 40 CFR 52.21 as incorporated by reference in this Rule. *[CAPCOA Model PSD Rule 10/25/11 – Applicability. Per USEPA note of 3/31/16 incorporation by reference officially placed in (A)(3)(a).]*
- (b) The provisions of this Rule apply to emissions or potential emissions of PSD Air Pollutants and their precursors as defined in subsection (B) below. *[40 CFR 52.21(a)(2)(1); (b)(50). PSD Air pollutants include NAAQS for which district is attainment, pollutants subject to NSPS standards, Class I and II pollutants under FCAA 602, and those subject to regulation under 40 CFR 52.21(b)(49) (currently GHG's).]*
- (c) The provisions of this Rule, specifically 40 CFR 52.21(j)-(r) as incorporated by reference below shall not apply to a Major PSD facility or Major PSD Modification with respect to a particular pollutant if the Major PSD Facility or Major PSD Modification is located in an area designated as nonattainment pursuant to 40 CFR 81.305 for the particular pollutant. *[40 CFR 52.21(a)(2)(i). Pollutant specificity added for clarity per USEPA comment. Currently portions of the District are Federal nonattainment for Ozone (NO_x and VOC) and PM₁₀. Please see staff report for notations]*

regarding pollutants which may trigger review under both Reg. XIII and Rule 1600.]

(3) Incorporation by Reference

- (a) The requirements and provisions contained in 40 CFR 52.21 in effect on July 1, 2015 are incorporated herein by reference with the exception of the following: *[Per USEPA note of 3/31/16 date reference should be July 1 prior to adoption date if there have been no revisions in the interim.]*
 - (i) 40 CFR 52.21(a)(1), (b)(55-58), (f), (g), (p)(6-8), (q), (s), (t), (u), (v), (w), (x), (y), (z), and (cc). *[CAPCOA Model PSD Rule 10/25/11 – Incorporation by Reference]*
 - (ii) The phrase “paragraph (q) of this section” in 40 CFR 52.21(p)(1) shall read as follows: the public notice and comment provisions contained in subsection (D)(2)(c) of this Rule. *[CAPCOA Model PSD Rule 10/25/11 – Incorporation by Reference 2.ii.]*
 - (iii) The term “Best Available Control Technology” or “BACT” as defined in 40 CFR 52.21(b)(12) shall read “PSD Best Available Control Technology” or “PSD BACT.” *[Allows use of new term and distinguishes it from term used under the District’s nonattainment NSR Program as contained in Regulation XIII]*
 - (iv) The term “Major Modification” as defined in 40 CFR 52.21(b)(2) shall read “Major PSD Modification.” *[Allows use of new term and distinguishes it from term used under the District’s nonattainment NSR Program as contained in Regulation XIII]*
 - (v) The term “Major Stationary Source” as defined in 40 CFR 52.21(b)(1) shall read “Major PSD Facility.” *[Allows use of new term and distinguishes it from term used under the District’s nonattainment NSR Program as contained in Regulation XIII]*
 - (vi) The term “Regulated NSR Pollutant” as defined in 40 CFR 52.21(b)(50) shall read “PSD Air Pollutant.” *[Allows use of new term and distinguishes it from term used under the District’s nonattainment NSR Program as contained in Regulation XIII]*
 - (vii) The term “Stationary Source” as defined in 40 CFR 52.21(b)(5) shall read “Facility.” *[Allows use of new term and distinguishes it from term used under the District’s nonattainment NSR Program as contained in Regulation XIII]*

(B) Definitions

For the purpose of this Rule the definitions contained in 40 CFR 52.21(b), excluding (b)(55), (b)(56), (b)(57) and (b)(58), shall apply unless the term is otherwise defined herein. *[CAPCOA Model PSD Rule 10/25/11 – Incorporation by Reference]*

- (1) Administrator – Either the administrator of USEPA or the Air Pollution Control Officer as follows: *[CAPCOA Model PSD Rule 10/25/11 – Incorporation by Reference 2.i.]*
- (a) For the provisions of 40 CFR 52.21(b)(17), (b)(37), (b)(43), (b)(48)(ii)(c), (b)(50)(i), (b)(51), (l)(2), and (p)(2), the administrator of USEPA; *[CAPCOA Model PSD Rule 10/25/11 – Incorporation by Reference 2.i.a.]*
 - (b) For all other provisions of 40 CFR 52.21 as incorporated by reference in this Rule, the Air Pollution Control Officer. *[CAPCOA Model PSD Rule 10/25/11 – Incorporation by Reference 2.i.b.]*
- (2) Air Pollution Control Officer (APCO) – The person appointed to the position of Air Pollution Control Officer of the District pursuant to the provisions of California Health & Safety Code §40750, and his or her designee. *[Derived from Rule 1301(E)]*
- (3) Authority to Construct Permit (ATC) - A District permit required pursuant to the provisions of District Rule 201 which must be obtained prior to the building, erecting, installation, alteration or replacement of any Permit Unit. Such permit may act as a temporary PTO pursuant to the provisions of District Rule 202. *[Derived from District Rule 1301(I)]*
- (4) District – The Mojave Desert Air Quality Management District the geographical area of which is described in District Rule 103. *[Derived from Rule 1301(S)]*
- (5) Major PSD Facility – A Major Stationary Source as defined in 40 CFR 52.21(b)(1) for a PSD Air Pollutant. *[Added to avoid confusion with District Regulation XIII terminology. Allows use of term in Rule.]*
- (6) Major PSD Modification – A Major Modification as defined in 40 CFR 52.21(b)(2) for an PSD Air Pollutant. *[Added to avoid confusion with District Regulation XIII terminology. Allows use of term in Rule.]*
- (7) Permit To Operate (PTO) - A District permit required pursuant to the provisions of District Rule 203 which must be obtained prior to operation of a Permit Unit. An ATC may function as a temporary PTO pursuant to the provisions of District Rule 202. *[Derived from District Rule 1301(RR)]*
- (8) Permit Unit – Any Emissions Unit which is required to have a PTO pursuant to the provisions of District Rule 203. *[Derived from District Rule 1301(SS)]*
- (9) PSD Air Pollutant – A Regulated NSR Pollutant as defined in 40 CFR 52.21(b)(50). . *[Allows use of term in Rule. See note in applicability section regarding application of both District Regulation XIII and this Rule to some pollutants and their precursors.]*

- (10) PSD Best Available Control Technology (PSD BACT) – Best Available Control Technology as defined in 40 CFR 52.21(b)(12). *[Added to avoid confusion with District Regulation XIII terminology. Allows use of term in Rule.]*
- (11) PSD Document – A document issued by the APCO pursuant to the provisions of this Rule including but not limited to: all analysis relating to the new Major PSD Facility or Facility with Major PSD Modification; notices; any engineering analysis or other necessary analysis; and proposed conditions for any required ATC(s) or PTO(s). *[Added to avoid terminology confusion per USEPA’s request. Reference to “offset package” removed per USEPA note of 3/31/16. Derived from District Rule 1301(LL)]*

(C) Requirements

- (1) An owner/operator of any new Major PSD Facility, a Facility with a Major PSD Modification, or a Major PSD Facility requesting or modifying a Plantwide Applicability Limitation (PAL) shall obtain a Prevention of Significant Deterioration (PSD) permit pursuant to this Rule before beginning actual construction of such Facility or modification. *[CAPCOA Model PSD Rule 10/25/11 –Requirements 1.]*
- (2) Notwithstanding the provisions of any other District Rule or Regulation, the APCO shall require compliance with this Rule prior to issuing a PSD permit as required by Section 165 of the Federal Clean Air Act (42 USC §7475). *[CAPCOA Model PSD Rule 10/25/11 – Requirements 2.]*
- (3) Greenhouse gas emissions shall not be subject to the requirements of subsections (k) or (m) of 40 CFR Part 52.21. *[CAPCOA Model PSD Rule 10/25/11 – Requirements 4.]*
- (4) An owner/operator of a Major PSD Facility seeking to obtain a PAL shall also comply with the provisions of 40 CFR 52.21 (aa)(1-15). *[Added pursuant to USEPA note of 3/31/16]*

(D) Procedure *[Please see staff report section (VI)(F) for explanation of the interconnected nature of the procedural process for nonattainment NSR, PSD and Toxic NSR actions.]*

- (1) General
 - (a) The provisions of District Rule 1302 shall apply unless otherwise specified herein. *[General cross reference to 1302 procedure.]*
 - (b) For Electrical Energy Generating Facilities (EEGFs) as defined in District Rule 1301(T) the provisions of this Rule shall apply in addition to the provisions of District Rule 1306. *[Allows PSD to be rolled into CEC licensing procedure. Additive language changed per USEPA request.]*

(2) Analysis

- (a) After the application has been determined to be complete pursuant to the provisions of District Rule 1302(B)(1)(a) and all appropriate notifications required pursuant to District Rule 1302 (B)(2)(a)(ii) and (B)(2)(c) have been sent the APCO shall: *[Provides application and notification procedure reference to Reg XIII provisions. Note: These actions occur after PSD applicability has been determined and is the analysis required by 1302(C)(5)]*
 - (i) Analyze the information to determine if the application complies with the provisions of 40 CFR 52.21 as incorporated by reference; and *[Allows for the review of air quality impact analysis, increment consumption analysis, soil/vegetation/visibility analysis and Class I area impacts if any/all are necessary.]*
 - (ii) Make a PSD BACT determination pursuant to the provisions of 40 CFR 52.21(j); *[Note: Reminds applicants that the BACT determination information proposed may not end up being BACT that actually gets applied to the equipment.]*
- (b) The APCO shall not perform any analysis unless all applicable fees, including but not limited to Project Evaluation Fees for Complex Sources, as set forth in District Rule 301, have been paid. *[Derived from Rule 1302(B)(4). Rule 301 has been amended to allow use of the “complex source analysis fee” to fund the issuance of the PSD analysis.]*
- (c) Such PSD analysis may be conducted concurrently with any analysis required pursuant to District Rules 1302, 1306, 1310, and/or 1320. *[Included to allow consolidated document to be produced]*

(3) Permit Issuance Procedure

- (a) Preliminary Decision
 - (i) After the analysis has been completed the APCO shall issue a preliminary decision as to whether the PSD Document should be approved, conditionally approved or disapproved and whether the ATC(s) or PTO(s) should be issued to the Major PSD Facility or Major PSD Modification. *[Derived from District Rule 1302(D)(1)(a)]*
 - (ii) The preliminary decision shall include an analysis of the approval, conditional approval or disapproval and the draft PSD Document. *[Derived from District Rule 1302(D)(1)(b)]*
 - (iii) The preliminary decision and draft PSD Document may be combined with any engineering analysis or draft NSR Document produced pursuant to the provisions of District Rule 1302. *[Included to allow consolidation of documents.]*

- (b) USEPA and Federal Land Manager Review.
 - (i) If USEPA and the Federal Land Manager were notified pursuant to the provisions of District Rule 1302 (B)(2)(a)(ii) or (B)(2)(c) then the APCO shall, upon completion of the preliminary decision and concurrently with the publication required pursuant to subsection (D)(2)(c) below, send a copy of the preliminary decision and any underlying analysis to USEPA and any Federal Land Manager so notified. *[Derived from District Rule 1302(D)(2)]*
 - (ii) The provisions of District Rule 1302 (D)(2) shall apply to the review by USEPA and the Federal Land Manager. *[Provides 30 day review period and notes how to handle comments.]*
 - (iii) This review may be combined with any other review required pursuant to District Rule 1302. *[Included to allow consolidation of documents.]*
- (c) Public Review, Comment and Availability of Documents
 - (i) Upon completion of the preliminary decision the APCO shall provide for public review and comment in the same manner and using the same procedures as set forth in District Rule 1302(D)(3). *[Rule 1302(D)(3) will be modified to include all items required pursuant to 40 CFR 51.166(p)(1-3) and (q)]*
 - (ii) Such public notice and comment may be combined with any other public notice and comment required pursuant to District Rule 1302. *[Included to allow consolidation of documents]*
- (d) Public Hearing
 - (i) If any person requests a public hearing pursuant to the provisions of District Rule 1302(D)(3)(d) the APCO shall hold a public hearing and notify the appropriate agencies and the general public using the procedures set forth in District Rule 1302(D)(3)(a). *[Derived from 40 CFR 51.166(q)(2)(v)]*
- (e) Final Action
 - (i) Within one (1) year of the notification that the application has been deemed complete pursuant to District Rule 1302(B)(2), or after such longer time as both the applicant and the APCO may agree in writing the APCO shall take final action to issue, issue with conditions or decline to issue the final PSD Document. *[Derived from District Rule 1302(D)(4)(b)]*
 - (ii) The APCO shall produce a final PSD Document after the conclusion of the comment period; the public hearing, if any is held; and upon consideration of comments received. *[Derived from District Rule 1302(D)(4)(a)]*

- (iii) The APCO shall provide written notice of the final action to the applicant and USEPA. *[Derived from District Rule 1302(D)(4)(c)]*
 - (iv) If substantive changes have been made to the preliminary decision or PSD Document after the opening of the public comment period the APCO shall publish a notice of the final PSD determination pursuant to the provisions of District Rule 1302(D)(3)(a). *[Derived from District Rule 1302(D)(4)(d)]*
 - (v) If substantive changes are made to the preliminary decision or PSD Document which are substantial enough to require changes to the underlying requirements or which result in a less stringent BACT determination then the APCO shall reissue and renotice the preliminary decision and draft PSD document pursuant to the provisions of District Rule 1302(D).
 - (vi) The final PSD Document and all supporting documentation shall remain available for public inspection at the offices of the District. *[Derived from District Rule 1302(D)(4)(e)]*
 - (vii) The final PSD Document may be combined with a final NSR Document produced pursuant to District Rule 1302(D)(4). *[Included to allow consolidation of documents.]*
- (e) Issuance of ATC(s) and or PTO(s)
- (i) In conjunction with the final action on the PSD Document the APCO shall issue ATC(s), or PTO(s) if applicable, for any Permit Units associated with a new Major PSD Facility and/or any Permit Units modified as a part of the Major PSD Modification
 - (ii) The ATC(s) or PTO(s) as issued shall contain all conditions regarding construction, operation and other matters as set forth in the PSD Document. *[Derived from CAPCOA Model PSD Rule 10/25/11 – Requirements 5. Note: Regulation XIII contains Rule 1306 which sets forth the permit issuance process for CEC licensing review. See also (D)(1)(b) above]*

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Rule 1300

General

(A) Purpose

- (1) The purpose of this Regulation is to:
 - (a) Set forth the requirements for the preconstruction review of all new or modified Facilities.
 - (b) Ensure that the ~~Construction~~Construction or Modification of Facilities subject to this Regulation does not interfere with the attainment and maintenance of Ambient Air Quality Standards.
 - (c) Ensure that there is no net increase in the emissions of any Nonattainment Air Pollutants from new or modified Major Facilities which emit or have the Potential to Emit any Nonattainment Air Pollutant in an amount greater than or equal to the amounts set forth in District Rule 1303(B)(1).
 - (d) Ensure that the Construction or Modification of Facilities subject to this Regulation comply with the preconstruction review requirements for Toxic Air Contaminants set forth in District Rule 1320.
 - (e) Ensure that the Construction or Modification of Facilities subject to this Regulation or District Regulation XVI – Prevention of Significant Deterioration comply with the preconstruction review requirements set forth in District Rule 1600. *[Added to allow addition of PSD procedures to Rule 1302.]*

(B) Applicability

- (1) The provisions of this Regulation shall apply to:
 - (a) Any new or modified Facility or Emissions Unit which requires a permit pursuant to the provisions of District Regulation II.

(C) Exemption

- (1) Change of Ownership
 - (a) Any Facility which is a continuing operation, shall be exempt from the provisions of this ~~Rule~~Regulation when:
 - (i) A new permit to operate is required solely because of permit renewal or change in ownership; and

- (ii) There is no Modification or change in operating conditions for the Facility.

(D) Interaction with Other Federal, State and District Requirements

(1) Interaction with District Rules

(a) Supers~~e~~ission of Various District Rules

- (i) This Regulation shall supersede District Rules 203.1, 203.2, 213, 213.1, 213.2, and 213.3 for all applications for ATC(s) which have not been accepted as complete prior to July 21, 1980 and for the issuance of PTO(s) which received ATC(s) under such rules prior to July 21, 1980. *[This statement will remain until USEPA takes official action to remove the listed rules from the SIP.]*

(b) Issuance of Authority to Construct Permits and Permits to Operate

- (i) ATC(s) and PTO(s) issued pursuant to this Regulation shall also comply with the applicable provisions of District Regulation II.

(2) Prevention of Significant Deterioration (PSD)

- (a) Nothing in this Regulation shall be construed to exempt a Facility or an Emissions Unit located in an area designated by USEPA as attainment or unclassified for a Regulated Air Pollutant from complying with the applicable provisions of Title I, Part C of the Federal Clean Air Act (42 U.S.C. §§7470-7492, Prevention of Significant Deterioration of Air Quality), ~~and~~ the regulations promulgated thereunder and District Rule 1600. *[Provides cross reference to PSD Rule.]*

(3) Other Federal Requirements

- (a) Nothing in this Regulation shall be construed to exempt a Facility or an Emissions Unit from complying with all other applicable Federal Requirements including, but not limited to, the following:
 - (i) Any standard or other requirement contained in the applicable implementation plan for the District, and any amendments thereto, approved or promulgated pursuant to the provisions of Title I of the Federal Clean Air Act (42 U.S.C. §§7401-7515).
 - (ii) Any standard or other requirement under 42 U.S.C. §7411, Standards of Performance for New Stationary Sources (Federal Clean Air Act §111); 42 U.S.C. §7412, Hazardous Air Pollutants (Federal Clean Air Act §112) or the regulations promulgated thereunder.
 - (iii) Any standard or other requirement under Title IV of the Federal Clean Air Act (42 U.S.C. §§7651-7651o, Acid Rain) or the regulations promulgated thereunder.

- (iv) Any standard or other requirement under Title V of the Federal Clean Air Act (42 U.S.C. §§7661a - 7661f, Permits), the regulations promulgated or the District program approved thereunder.
- (v) Any standard or other requirement of the regulations promulgated under Title VI of the Federal Clean Air Act (42 U.S.C. §§7671-7671q, Stratospheric Ozone Protection) or the regulations promulgated thereunder.
- (vi) Any national Ambient Air Quality Standard or increment or visibility requirement promulgated pursuant to part C of Title I of the Federal Clean Air Act (42 U.S.C. §7401-7515).

(E) Violations

- (1) Failure to comply with the provisions of this Regulation shall result in enforcement action under applicable provisions of Division 26, Part 4, Chapter 4 of the California Health and Safety Code (commencing with §42300) and or applicable provisions of the Federal Clean Air Act (42 U.S.C. §§ 7401 et.seq.)

~~[SIP: Submitted as amended 09/24/01 on _____; Approved 11/13/96, 61 FR 58133, 40 CFR 52.220(e)(239)(i)(A)(1); Submitted recision of 10/27/93 on 03/29/94]~~
~~See SIP Table at: <http://www.mdaqmd.ca.gov/Modules/ShowDocument.aspx?documentid=45>~~

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Rule 1302 Procedure

(A) Applicability

- (1) This ~~rule~~Rule shall apply to all new or modified Facilities

~~(a) _____, including~~ EEGFs as defined in District Rule 1301(T) shall also be subject, pursuant to the provisions of District Rule 1306. [Revised for clarity per USEPA comment.]

(B) Applications

(1) Initial Analysis

- (a) Any application for an ATC or modification to a PTO, submitted pursuant to the procedures of District Regulation II, shall be analyzed to determine if such application is complete. An application shall be deemed complete when it contains the following, as applicable:

(i) General Requirements

~~(i)a. An application is complete when it contains e~~nough information to allow all the applicable analysis and calculations required under this Regulation to be made including but not limited to identification of all new or modified Emissions Units, the amount of potential emissions from such new or modified Emissions Units, information sufficient to determine all rules, regulations or other requirements applicable to such Emissions Units, and information regarding air quality modeling protocols and results. [Pursuant to USEPA note of 3/31/16 additional specification of required information provided. See 40 CFR 51.160(c-f)]

~~(ii)b. Comprehensive Emission Inventory~~

~~a. All Facilities shall submit a~~A Comprehensive Emissions Inventory. ~~in conjunction with the application.~~

~~b. If a Facility has a current, approved Comprehensive Emissions Inventory on file with the District such Facility may, upon written request and approval of the APCO, update the Comprehensive Emission Inventory to reflect the addition, deletion or modification of all Emissions Units affected by the application.~~

- ~~e. No application may be determined to be complete without a Comprehensive Emissions Inventory or Comprehensive Emission Inventory update.~~
- ~~c. A District Rule 1600 applicability analysis sufficient to determine whether the Facility or Modification is or is not a Major PSD or a Major PSD Modification as defined in District Rule 1600(B) using the procedures set forth in 40 CFR 52.21(a)(2). [Sets forth requirement to include PSD applicability analysis in application. See also (B)(1)(a)(ii)a.3.]~~
- ~~d. Any other information specifically requested by the District. [Catch all provision in case additional information is needed.]~~
- (ii) Requirements for Facilities Requiring Offsets
 - ~~(iii)a. For all new and modified Facilities requiring offsets pursuant to District Rule 1303(B):~~
 - ~~1. An Alternative Siting analysis a. For Facilities and Modifications requiring offsets pursuant to District Rule 1303(B) a complete application shall includeing an analysis of alternative sites, sizes and production processes pursuant to 42 U.S.C. §7503(a)(5) (Federal Clean Air Act §173(a)(5)). Such analysis shall be functionally equivalent to that required pursuant to Division 13 of the California Public Resources Code (commencing with section 21000). b. The provisions of (B)(1)(a)(iii)a. above shall not apply if the Facility or Modification has been determined to not be a Federal Major Facility or a Federal Major Modification as defined in District Rule 1310(C)(6) and (7) or the Facility has previously applied for and received a valid Plantwide Applicability Limit (PAL) pursuant to the provisions of District Rule 1310(F). [Typographical error correction and language standardization. Exemption language moved to subsection 4. below.]~~
 - ~~(iv)2. A Statewide Compliance Certification~~
 - ~~a. For Facilities and Modifications which require offsets pursuant to District Rule 1303(B) a complete application shall include a certification stating that all Facilities which are under the control of the same person (or persons under common control) in the State of California are in compliance with all applicable emissions limitations and standards under the Federal Clean Air Act and the applicable implementation plan for the air district in which ~~at the~~ other Facilities are located. [Renumbered to standardize outline format.]~~

3. A District Rule 1310 applicability analysis sufficient to show that the Facility or Modification is or is not a Federal Major Facility or a Federal Major Modification as defined in District Rule 1310(C). *[Relocated from Section (B)(1)(a)(vi)a. Renumbered to standardize outline format. Language adjusted for clarity per USEPA comment of 3/31/16]*
 4. The requirements of subsections (B)(1)(a)(ii)a.1. and .2 shall not apply if the Facility or Modification has been determined to not be a Federal Major Facility or a Federal Major Modification as defined in District Rule 1310(C)(6) and (7) or the Facility has previously applied for and received a valid Plantwide Applicability Limit (PAL) pursuant to the provisions of District Rule 1310(F). *[Per USEPA note of 3/31/16 Alternative Siting and Compliance Certification not required for non-federal major facilities. However, please note that such analysis may still be required pursuant to CEQA]*
- (viii) Mandated Class I Federal Area ~~Visibility~~ Protection Analysis *[Modified to conform term with 40 CFR 51.301]*
- a. An application for a Federal Major Facility or a Facility with a Federal Major Modification as defined in District Rule 1310(C)(6) and (7) which is located within 100 km (62.137 miles) ~~of a Class I Area, or which may have an impact upon visibility in any Mandatory Class I Federal Area,~~ as defined in 40 CFR 51.301~~(e)~~, shall include in its application an analysis of any anticipated impacts on visibility within that Mandated Class I Federal Area. Such analysis shall include, but is not limited to, an analysis of the factors found in 40 CFR 51.301~~7~~(ac). *[Modified to reflect USEPA Memo of 10/19/92 J. Seitz to USEPA Regions. Citation and language correction per USEPA note of 3/31/16 to conform terms with 40 CFR 51.301. 100km (62.137 mile) requirement included per USEPA comment of 6/14/16.]*
- ~~(vi)~~(iv) District Rule 1310 Applicability Plantwide Applicability Limit (PAL) Analysis
- a. ~~For Facilities and Modifications which requires offsets pursuant to District Rule 1303(B) a complete application may include an analysis sufficient to show that the Facility or Modification is not a Federal Major Facility or a Federal Major Modification as defined in District Rule 1310(C)(6) and (7). *[Moved to Section (B)(1)(a)(ii)c.]*~~
 - ba. For a Facility requesting a PAL pursuant to District Rule 1310(F) ~~a complete application shall include an~~ analysis sufficient to justify the classification of the

Facility as a Federal Major Facility as defined in District Rule 1310(C)~~(6)~~ and any information necessary to issue the proposed PAL in conformance with all applicable provisions of 40 CFR 51.165(f)(1-15). *[Renumbered to reflect outline format]*

- b. *For a Facility requesting a PAL pursuant to the provisions of 40 CFR 52.21(aa) an analysis sufficient to justify the applicability to obtain a PAL and any information necessary to issue the proposed PAL in conformance with all applicable provisions of 40 CFR 52.21(aa). [Added per USEPA note of 3/31/16 regarding proposed Rule 1600(C)(1) requirements for permitting PSD PALs]*

(v) Prevention of Significant Deterioration (PSD) Analysis

- a. *For a Facility which is a Major PSD Facility or Major PSD Modification as defined in District Rule 1600(B): [Cross reference to PSD applicability analysis added per USEPA note of 3/31/16]*

1. *A modeling protocol consistent with the most recent USEPA guidance and approved by the APCO. Such protocol shall also be submitted to USEPA and, if applicable, the Federal Land Manager(s) of any potentially impacted area; and [40 CFR 51.166, 51.307 and 52.21(p). Pre-approval of protocol was suggested by USEPA to avoid undue expense by applicant.]*
2. *A control technology review pursuant to 40 CFR 52.21(j); and [USEPA NSR Workshop Manual, Draft 1990 pg. 4-5]*
3. *A source impact analysis, including but not limited to analysis pursuant to 40 CFR 52.21(k) and a per-application analysis pursuant to 40 CFR 52.21(m)(1); and [USEPA NSR Workshop Manual, Draft 1990 pg. 4-5]*
4. *Information required pursuant to 40 CFR 52.21(n) if not provided elsewhere in the application; and [USEPA NSR Workshop Manual, Draft 1990 pg. 4-5]*
5. *An additional impact analysis including but not limited to analysis of direct and indirect impacts of the proposed emissions increase on soils, vegetation and visibility, pursuant to 40 CFR 52.21(o); and [USEPA NSR Workshop Manual, Draft 1990 pg. 4-5]*
6. *An analysis of anticipated impacts on a Class I area if the Facility is located within 63 miles (100 kilometers) of such area pursuant to 40 CFR 52.21(p); and [USEPA NSR Workshop Manual, Draft 1990 pg. 4-5]*

- (b) The APCO shall determine whether the application is complete not later than thirty (30) calendar days after receipt of the application, or after such longer time as both the applicant and the APCO may agree in writing.
[See: 40 CFR 52.166(q)(1), 40 CFR 70.5(a)(2), 40 CFR 124.3(c), Health & Safety Code 42301.3(d)(1).]

(2) Notifications Regarding Applications

- (a) After the determination of completeness has been made, the APCO shall transmit a written determination of completeness or incompleteness immediately within 10 working days to the applicant at the address indicated on the application.
- (i) If the application is determined to be incomplete, the determination shall specify which parts of the application are incomplete and how they can be made complete.
- a. Upon receipt by the APCO of information required to render an application complete or upon resubmittal of the entire application, a new thirty (30) day period in which the APCO must determine completeness, shall begin.
- (ii) When an application subject to the provisions of Rule 1600 is determined to be complete the APCO shall transmit a copy of the written completeness determination to USEPA and, upon request, provide USEPA with a copy of the application. [Required by 40 CFR 51.166(p)(1), 51.166(q)(2) and 52.21(p)(1)]
- (b) In the alternative, the APCO may complete the issuance of the ATC(s) within the thirty (30) calendar days after receipt of the application so long as all applicable analysis required pursuant to section (C) have been performed and the provisions of subsection (C)(7)(d) applies. either of the following conditions are met:
- ~~(i) None of the requirements contained in District Rule 1303 apply to the project; or [Provision moved to improve flow.]~~
- ~~(ii) The requirements of District Rule 1303(A) applies to the project and the issuance of the ATC(s) comply with the requirements of subsection (C)(2)(a)(i). [Provision moved to improve flow.]~~
- (c) If the application contains an analysis of anticipated visibility impacts on a Mandated Class I Federal Area, as defined in 40 CFR 51.301~~(e)~~, pursuant to subsection (B)(1)(a)~~(viii)~~ above or (B)(1)(a)(v)a.5., the APCO shall, within thirty (30) calendar days after receipt of the application, notify USEPA and the Federal Land Manager of the affected Class I Area.
[Modified to conform term to 40 CFR 51.301. 100km requirement for

visibility has been restored to Rule 1302(B)(1)(a)(iii) per USEPA comment of 6/14/2016.]

- (i) The APCO shall include in such notification a copy of the application ~~and all information relevant thereto, and the analysis of anticipated impacts on the affected Class I Area.~~ [Provides notification requirements per 40 CFR 52.166(p)(1) required for PSD implementation.]

(3) Effect of Complete Application

- (a) After an application is determined to be complete, the APCO shall not subsequently request of an applicant any new or additional information which was not required pursuant to subsection (B)(1)(a) or by a determination of incompleteness pursuant to subsection (B)(2)(a)(i). ~~specified in the APCO's list of items to be included within such applications.~~ [Typographical error correction. Modified to cross reference application requirements per USEPA note of 3/31/16.]
- (b) Notwithstanding the above, the APCO may, during the processing of the application, require an applicant to clarify, amplify, correct or otherwise supplement the information required in such list in effect at the time the complete application was received.
- (c) A request by the APCO for clarification pursuant to subsection (B)(3)(b) above does not waive, extend, or delay the time limits in this ~~rule~~Rule for final action on the completed application, except as the applicant and the APCO may both agree in writing.

(4) Fees

- (a) The APCO shall not perform any analysis as set forth in section (C) below unless all applicable fees, including but not limited to Project Evaluation Fees for Complex Sources, as set forth in District Rule 301, have been paid. [Typographical error correction]

(C) Analysis [Please see flow chart]

(1) Determination of Emissions

- (a) The APCO shall analyze the application to determine the type, amount, and change (if any) in emissions pursuant to the provisions of District Rules 1304, 1310 and 1600. [Consolidates provisions and mandates PSD emissions calculations.]

~~(b) If a Facility has provided information pursuant to subsection (B)(1)(a)(vi) above, the APCO shall also analyze the application to determine the type, amount and change (if any) in emissions pursuant to the provisions of District Rule 1310.~~

- (2) Determination of Nonattainment NSR Requirements [Reorganized to reflect actual analysis process and flow.]
- (a) After determining the emissions change (if any) The APCO shall, ~~after the analysis,~~ determine if any or all of the provisions of District Rule 1303 apply to the new or modified Facility.
- (i) If none of the provisions of District Rule 1303 apply to the new or ~~M~~modified Facility, then the APCO shall ~~commence the issuance of the ATC or modification of the PTO pursuant to the provisions of Regulation II~~ continue the analysis at subsection (C)(5) below. [Provision moved to (C)(7)(a)(i) below. Continues analysis flow.]
- (ii) If only the provisions of District Rule 1303(A) apply to the new or modified Facility, and the application does not utilize SERs to reduce PE then:
- a. The APCO ~~shall commence the issuance of the ATC or modification of the PTO pursuant to the provisions of Regulation II; and~~ [Provision moved to (C)(7)(a)(ii) below.]
- b. ~~The ATC or PTO so issued or modified shall~~ develop and include conditions on any proposed ATC or PTO required to implement BACT on all new or modified Emissions Unit(s) subject to the provisions of District Rule 1303(A) at the Facility; and [Modified to provide additional reference to requirements of 1303(A) per USEPA note of 3/31/16]
- b. Continue the analysis at subsection (C)(4) below. [Continues analysis flow.]
- (iii) If only the provisions of District Rule 1303(A) apply to the new or modified Facility, and the application utilizes SERs to reduce PE then:
- a. The APCO shall produce a Facility engineering analysis which contains substantially the same information required for a decision under section (D) below; and
- b. After the production of the Facility engineering analysis the APCO shall ~~commence the issuance of the ATC or modification of the PTO pursuant to the provisions of Regulation II; and~~
- c. ~~The ATC or PTO so issued or modified shall~~ develop and include conditions on any proposed ATC or PTO required to implement BACT on all new or Modified Emission Unit(s) subject to the provisions of District Rule 1303(A) at the Facility; and
- c. Continue the analysis at subsection (C)(4) below. [Continues analysis flow.]
- (iv) If the provisions of District Rule 1303(B) apply to the new or modified Facility then the APCO shall continue the analysis ~~and issuance procedure as set forth in this Rule~~ at subsection (C)(3) below. [Continues analysis flow.]

~~(b) If the provisions of District Rule 1303(B) and the new or modified Facility is located in an area classified by USEPA as attainment or unclassifiable then the APCO shall, after analysis, determine if the Facility will cause or contribute to a violation of the national Ambient Air Quality Standards.~~

~~(i) The provisions of section (C)(2)(b) above may be satisfied by performance of appropriate modeling as approved by the APCO. [Provision moved to subsection (D)(5)(b)(iv)]~~

(3) Determination of Offsets

(a) If the provisions of District Rule 1303(B) apply to the new or modified Facility, then the APCO shall analyze the application to determine the amount and type of Offsets required pursuant to the provisions of District Rule 1305. [Moved from (C)(5)(a)]

(i) The APCO shall thereafter notify the applicant in writing of the specific amount and type of Offsets required. [Moved from (C)(5)(a)(i). Word "required" added per USEPA suggestion of 6/14/16.]

(b) Upon receipt of the notification, the applicant shall provide to the APCO a proposed Offset package which contains evidence of Offsets eligible for use pursuant to the provisions of District Rule 1305. [Moved from (C)(5)(b)]

(i) The APCO shall analyze the proposed Offset package to determine if an adjustment in the value of such Offsets is required pursuant to the provisions of District Rule 1305(C)(4). [Moved from (C)(5)(b)(i). Cross reference to RACT upon use provision.]

(ii) The APCO shall disallow the use of any Offsets which were created by the shutdown of Emissions Unit(s) when:

a. The Offsets were created by a shutdown of Emissions Unit(s) which was not contemporaneous with the creation of the Offsets or were not in compliance with the provisions of 40 CFR 51.165(a)(3)(ii)(C); and [Moved and modified from (C)(5)(b)(ii)a. Modified to provide cross reference to specific provisions regarding offsets created from shutdowns per USEPA note of 3/31/16.]

b. USEPA has disapproved the applicable implementation plan for the District or USEPA has made a finding of a failure to submit for the District of all or a portion of an applicable implementation plan. [Moved and modified from (C)(5)(b)(ii)b. Provisions added to comply with requirements of 40 CFR 51.165(a)(3)(ii)(C). Please note all offsets must also comply with all applicable provisions of Rule 1305 and or Regulation XIV]

- (iii) After determining that the Offsets are real, enforceable, surplus, permanent and quantifiable and after any permit modifications required pursuant to District Rule 1305 or Regulation XIV have been made, the APCO shall approve the use of the Offsets. *[Moved from (C)(5)(b)(iii)]*
 - a. For a Federal Major Facility as defined in District Rule 1310(C)(6) or Federal Major Modification as defined in District Rule 1310(C)(7) and which is located in a Federal nonattainment area, the APCO's approval shall be subject to the approval of CARB and USEPA during the comment period required pursuant to subsection (D)(2) below. *[Moved from (C)(5)(b)(iii)a.]*
 - b. For all other Facilities or Modifications subject to this provision the APCOs approval shall be subject to the approval of CARB during the comment period required pursuant to subsection (D)(2) below. *[Moved from (C)(5)(b)(iii)b.]*
- (iv) The Offset package must be submitted and approved by the APCO prior to the issuance of the NSR Document and any permits. *[Moved from (C)(5)(b)(iv). Modified use nomenclature found in Rule 1301(DD).]*
- (v) The Offsets must be obtained prior to the commencement of construction on the new or modified Facility. *[Moved from former subsection (C)(5)(b)(v).]*
- (vi) The Offsets must be fully enforceable and in effect by the time the new or modified Facility commences operation. *[Added pursuant to USEPA note of 3/31/16 to provide ultimate backstop provision for ultimate use of offsets. See: 42 USC 7503(a)(1)(a) and (c)(1); 57 FR 13498, 13553 (4/16/92); 57 FR 55620, 55624 (11/25/92); 40 CFR 51.165(a)(3); 40 CFR 51 appendix S V.A.1.; and Memorandum: Offsets Required Prior to Permit Issuance dated 6/14/1994]*
- (c) After determination of the amount and type of offsets required and approval of the Offset package the APCO shall continue the analysis at subsection (C)(4) below. *[Modified for flow clarity]*

(4) Determination of Additional Federal Requirements

- (a) For Facilities which have provided information pursuant to subsection (B)(1)(a)(~~v~~i)a.3, the APCO shall, after the analysis, determine if any or all of the provisions of District Rule 1310 apply to the new or modified Facility. *[Citation corrected. Terminology shifted per USEPA suggestion of 6/14/16.]*
 - (i) If none of the provisions of District Rule 1310 apply to the new or modified Facility the APCO shall continue the analysis ~~and~~

- ~~issuance procedure as set forth in this Rule~~ at subsection (C)(5) below. *[Modified for flow clarity.]*
- (ii) If any of the provisions of District Rule 1310 apply to the ~~modification~~ new or modified Facility the APCO prior to issuing any ATC or PTO shall:
- a. Ensure that an alternative site analysis required under 42 U.S.C. §7530(a)(5) (Federal Clean Air Act §173(a)(5)) has been performed; and
 - b. Ensure that a statewide compliance certification pursuant to subsection (B)(1)(a)(ii)a.2. has been performed and submitted; and *[Cross referencing provision added per USEPA suggestion of 6/14/16]*
 - ~~bc.~~ Add any conditions to the applicable permits required to implement any provisions of District Rule 1310~~;~~ and
 - d. Continue the analysis at subsection (C)(5) below. *[Continues analysis flow.]*
- (b) For Facilities and Modifications which require offsets pursuant to District Rule 1303(B) which do not provide information pursuant to (B)(1)(a)(vi)a. prior to issuing any ATC or PTO the APCO shall:
- (i) Ensure that an alternative site analysis required under 42 U.S.C. §7530(a)(5) (Federal Clean Air Act §173(a)(5)) has been performed; and
 - (ii) Add any conditions to the applicable permits required to implement any provisions of District Rule 1310; and
 - (iii). Continue the analysis at subsection (C)(5) below. *[Continues analysis flow.]*
- (c) For a Facility requesting a PAL pursuant to the provisions of District Rule 1310(F) the APCO shall add any conditions to the applicable permits required to implement the PAL and continue the analysis at subsection (C)(5) below. *[Continues analysis flow.]*
- ~~(45)~~ Determination of Requirements for Toxic Air Contaminants
- (a) The APCO shall determine if any of the provisions of District Rule 1320 - New Source Review of Carcinogenic Air Contaminants apply to the new or ~~Mm~~modified Facility.
- (i) If none of the provisions of District Rule 1320 apply the APCO shall continue the analysis at subsection (C)(6) below. *[Continues analysis flow.]*
 - (ii) If any of the provisions of District Rule 1320 apply to the new or ~~Mm~~modified Facility the APCO shall
 - a. ~~Require~~ the Facility to comply with the applicable provisions of that ~~rule~~Rule prior to proceeding with any

further analysis or processing of an application pursuant to this Regulation; and

- b. Add any conditions to the applicable permits required to implement any provisions of Rule 1320; and
- c. Continue the analysis at subsection (C)(6) below.
[Continues analysis flow.]

~~(5)~~ **Determination of Offsets**

~~(a) If the provisions of District Rule 1303(B) apply to the new or modified Facility, then the APCO shall analyze the application to determine the amount and type of Offsets required pursuant to the provisions of District Rule 1305. [Moved to (C)(3)(a)]~~

~~(i) The APCO shall thereafter notify the applicant in writing of the specific amount and type of Offsets. [Moved to (C)(3)(a)(i)]~~

~~(b) Upon receipt of the notification, the applicant shall provide to the APCO a proposed Offset package which contains evidence of Offsets eligible for use pursuant to the provisions of District Rule 1305. [Moved to (C)(3)(b)]~~

~~(i) The APCO shall analyze the proposed Offset package to determine if an adjustment in the value of such Offsets is required pursuant to the provisions of District Rule 1305(C)(4). [Moved to (C)(3)(b)(i)]~~

~~(ii) The APCO shall disallow the use of any Offsets which were created by the shutdown of Emissions Unit(s) when: [Moved to (C)(3)(b)(ii)]~~

~~a. The Offsets were created by a shutdown of Emissions Unit(s) which was not contemporaneous with the creation of the Offsets; and [Moved to (C)(3)(b)(ii)a.]~~

~~b. USEPA has disapproved the applicable implementation plan for the District or USEPA has made a finding of a failure to submit for the District of all or a portion of an applicable implementation plan. [Moved to (C)(3)(b)(ii)b.]~~

~~(iii) After determining that the Offsets are real, enforceable, surplus, permanent and quantifiable and after any permit modifications required pursuant to District Rule 1305 or Regulation XIV have been made, the APCO shall approve the use of the Offsets. [Moved to (C)(3)(b)(iii)]~~

~~a. For a Federal Major Facility as defined in District Rule 1310(C)(6) or Federal Major Modification as defined in District Rule 1310 (C)(7) and which is located in a Federal nonattainment area, the APCO's approval shall be subject to the approval of CARB and USEPA during the comment period required pursuant to subsection (D)(2) below. [Moved to (C)(3)(b)(iii)a.]~~

- ~~b. For all other Facilities or Modifications subject to this provision the APCOs approval shall be subject to the approval of CARB during the comment period required pursuant to subsection (D)(2) below. *[Moved to (C)(3)(b)(iii)b.]*~~
- ~~(iv) The Offset package must be submitted and approved by the APCO prior to the issuance of the New Source Review Document and any permits. *[Moved to (C)(3)(b)(iv)]*~~
- ~~(v) The Offsets must be obtained prior to the commencement of construction on the new or Modified Facility. *[Moved to (C)(3)(b)(v)]*~~

(6) Determination of Requirements for Prevention of Significant Deterioration (PSD)

- (a) The APCO shall review the PSD applicability analysis submitted pursuant to subsection (B)(1)(a)(i)c. to determine if the proposed new or modified Facility is or is not a Major PSD Facility or a Major PSD Modification as defined in District Rule 1600 and determine which, if any of the provisions of District Rule 1600 apply to the new or modified Facility. *[Revised to reflect the fact that the calculations need to be done to determine applicability per USEPA note 3/31/16.]*
 - (i) If the APCO determines that proposed new or modified Facility is a Major PSD Facility or a Major PSD Modification as defined in District Rule 1600 then the APCO shall perform the analysis required pursuant to the provisions of District Rule 1600(D)(2); and *[Added to require PSD Analysis]*
 - (ii) If the proposed new or modified Facility contains a request for a new or modified PAL then the APCO shall perform the analysis required pursuant to the provisions of 40 CFR 52.21(aa)(1-15); and *[Added to require PAL analysis per USEPA note of 3/31/16.]*
 - (iii) The APCO shall either complete the PSD permit issuance pursuant to the provisions of Rule 1600(D) or combine the appropriate analysis and necessary conditions with those required pursuant to this Regulation; and *[Added to allow PSD issuance separately or in conjunction with nonattainment NSR permitting.]*
 - (ii) Continue the analysis at subsection (C)(7) below. *[Continues analysis flow.]*

(7) Determination of Notice Requirements

- (a) If any of the following apply then the APCO shall commence the issuance of the ATC(s) or modification of the PTO(s) pursuant to the provisions of subsection (D).
 - (i) The Facility with the new or modified permit unit is subject to the provisions of District Regulation XII – *Federal Operating Permits; [Aka the action is at a Title V Facility. Allows District to obtain*

“enhanced NSR” authority such that NSR/PSD actions can be concurrently included in the Title V permit without additional noticing.]

- (ii) The provisions of District Rule 1303(B) apply; [Aka the action needs offsets]
- (iii) The provisions of District Rule 1310 apply; [Aka the action involves a Federal Major Facility]
- (iv) The provisions of District Rule 1600 apply. [Aka the action is subject to PSD requirements.]

(b) If any of the proposed new or modified Emissions Units require public notification pursuant to the provisions of District Rule 1320(E)(3)(e)(iii) or (F)(2)(b) then the APCO shall: [Notice is triggered by emission unit HRA over a threshold amount or case-by-case MACT determination.]

- (i) Provide the notice specified by the applicable provision(s) of District Rule 1320 in addition to any other required notice; or
- (ii) Provide notice pursuant to the provisions of subsection (D)(3)(a) containing any additional information required pursuant to the applicable provision(s) of District Rule 1320. [Derived from Health & Safety Code 44362(b) and 40 CFR 63.43(h). Provision allows toxic notices to be combined with appropriate NSR/PSD notice level.]

(c) If none of the provisions listed in subsection (7)(a) or (b) above apply then the APCO shall commence the issuance of the ATC(s) or modification of the PTO(s) pursuant to the provisions of District Regulation II and provide notification of such permit issuance pursuant to the provisions of subsection (D)(3)(a)(ii) if any of the following apply:

- (i) The application uses SERs to reduce PE pursuant to the provisions of District Rule 1304; or [Aka it's a net-out transaction].
- (ii) The emissions change (if any) for any Regulated Air Pollutant as calculated under subsection (C)(1) is greater than any of the following:
 - a. 80% of the Major Facility Threshold for a Nonattainment Air Pollutant as set forth in District Rule 1303(B); or
 - b. 80% of the Federal Major Facility Threshold for HAPs as set forth in District Rule 1201(S)(1)(c) or (S)(2)(b); or
 - c. The Federal Significance Level for a Regulated Air Pollutant as defined in 40 CFR 52.21(b)(23).

[Provides for notice of minor source NSR permitting actions as required by USEPA. Modified to cover all regulated air pollutants, not just nonattainment pollutants as requested by USEPA note of 3/31/16. See staff report table This would result in the following notice thresholds: NOx & ROC = 20 tpy (80% of nonattainment major source threshold from 1303(B)), PM10 = 12 tpy (80% of nonattainment major source threshold from 1303(B)), HAP = 8 tpy single HAP; 20 tpy multiple HAPs (80%

Federal Major Facility Threshold for Haps from 1201(S)), all other regulated pollutants...since they are attainment/unclassified would be at the significance level found in 52.21(b)(23)(i)]

- (d) If none of the provisions listed in subsection (7)(a), (b) or (c) above apply then the APCO shall commence the issuance of the ATC(s) or modification of the PTO(s) pursuant to the provisions of District Regulation II. [Provision moved and modified from (C)(2)(a)(i). Action is too small to trigger notice.]

(D) Permit Issuance Procedure

(1) Preliminary Decision

- (a) After the analysis has been completed, the APCO shall issue a preliminary decision as to whether the ~~NSR~~Source Review Document should be approved, conditionally approved, or disapproved and whether ATC(s) should be issued to the new or modified Facility. [Term modified for clarity per USEPA comment.]
- (b) The preliminary decision shall include:
- (i) A succinct written analysis of the approval, conditional approval or denial; and
 - (ii) If approved or conditionally approved, proposed permit conditions for the ATC(s) or modified PTO(s) and the reasons for imposing such permit conditions.
- (c) The preliminary decision and draft NSR Document may be combined with any document(s) produced pursuant to District Rule 1600. [Allows combination with PSD documents per 1600(D)(3)(a)(iii)]
- (d) The preliminary decision, draft NSR Document, and draft PSD Document, if any, may also be combined with any document(s) produced pursuant to District Regulation XII. In such case the preliminary decision, Draft NSR Document and draft PSD Document shall conform to the applicable provisions of District Regulation XII and 40 CFR 70.6(a-g), 70.7(a-b) and 70.8 and will serve as the draft Statement of Legal and Factual Basis and draft Federal Operating Permit. [Derived from SJVAPCD Rule 2201(5.9) and Yolo-Solano AQMD Rule 3.4(404). Language added to allow combination with Title V permit issuance or modification under Enhanced NSR per USEPA request of 6/14/16.]

(2) CARB, USEPA and Affected State Review

- (a) ~~If the provisions of District Rule 1303(B) apply to the new or modified Facility~~ notice is required pursuant to the provisions of subsection (C)(7)(a-c) the APCO shall, concurrently with the publication required

pursuant to subsection (D)(3) below, send a copy of the preliminary decision and any underlying analysis to CARB, USEPA and any Affected State. *[Deleted language shifted to section (C). Provides for minor NSR action notice to CARB & USEPA. Also satisfies review opportunity requirement pursuant to 40 CFR 51.166(p)(1) and 51.166(q)(2)(iv) necessary for PSD SIP approval.]*

- (b) CARB, USEPA and any Affected State shall have thirty (30) days from the date of publication of the notice pursuant to subsection (D)(3) below to submit comments and recommendations regarding the preliminary decision.
- (c) Upon receipt of any comments and/or recommendations from CARB USEPA and any Affected State the APCO shall either:
 - (i) Accept such comments and/or recommendations and modify the preliminary decision accordingly; or
 - (ii) Reject such comments and/or recommendations, notify CARB, USEPA, and/or the Affected State of the rejection and the reasons for such rejection.
- (d) For applications containing an analysis of anticipated visibility impacts on a Mandated Class I Federal Area, as defined in 40 CFR 51.301~~(a)~~, pursuant to subsection (B)(1)(a)~~(viii)~~ or (B)(1)(a)(v)a.5.-6. above, the APCO, upon receipt of any comments from USEPA or the Federal Land Manager of the affected Modified Class I Federal Area, shall: *[Reflects reorganization of subsection (B)(1)(a). Modified to conform term with 40 CFR 51.301]*
 - (i) Accept such comments and/or recommendations and modify the preliminary decision accordingly; or
 - (ii) Reject such comments and/or recommendations, notify CARB, USEPA, and/or the Federal Land Manager of the affected Mandated Class I Federal Area of the rejection and the reasons for such rejection. *[Also satisfies review opportunity requirement for Federal Land Manager pursuant to 40 CFR 51.166(p)(1) and 51.166(q)(2)(iv) necessary for PSD SIP approval]*

(3) Public Review and Comment

- (a) Publication of Notice and Notice Requirements *[Generally see 40 CFR 51.161(a)]*
 - (i) If notice is required pursuant to the provisions of subsection (C)(7)(a) or (D)(4)(d) ~~the provisions of District Rule 1303(B) apply to the new or modified Facility~~ then, within ten (10) days of the issuance of the preliminary determination, the APCO shall:

- a. Produce a notice containing all the information set forth in subsection (D)(3)(a)(iii); and
- b. Publish a notice in at least one newspaper of general circulation within the District; and *[Also satisfies notice pursuant to 40 CFR 51.166(q)(2)(iii) necessary for PSD SIP approval.]*
- ~~b~~c. Send a copy of the notice containing the information set forth in subsection (D)(3)(a)(iii) to the applicant; CARB; USEPA; Affected State(s); City and County where the proposed Facility or Modification is located; any State or Federal Land Manager or Indian governing body who's lands might be affected by emissions from the proposed Facility or Modification; and all persons who have requested such notice and/or on a list of persons requesting notice of actions pursuant to this regulation generally on file with the Clerk of the Board for the District; and *[Adds additional persons required for notice pursuant to 40 CFR 51.166(q)(2)(iv) necessary for PSD SIP approval.]*
- ~~e~~d. Provide notice by other reasonable means including but not limited to posting on the District's website, if such notice is necessary to assure fair and adequate notice to the public. *[Intent is to publish all notices on the District's website. Also satisfies notice pursuant to 40 CFR 51.166(q)(2)(iv) necessary for PSD SIP approval.]*
- (ii) If notification of permit issuance is required pursuant to the provisions of subsection (C)(7)(c) then, within thirty (30) days of the issuance of the engineering analysis the APCO shall:
 - a. Produce a notice containing the information set forth in subsection (D)(3)(a)(iv) below; and
 - b. Post the notice on the District's website; and
 - c. Send a copy of the notification to the applicant; CARB; USEPA; Affected State(s); and all persons who have requested such notice and/or on a list of persons requesting notice of actions pursuant to this regulation generally on file with the Clerk of the Board for the District.
- (iii) ~~Such~~ The notice required pursuant to subsection (D)(3)(a)(i) shall provide thirty (30) days from the date of the publication of the notice for the public to submit written comments on the preliminary decision and shall include: *[Also satisfies notice pursuant to 40 CFR 51.166(q)(2)(iii) necessary for PSD SIP approval.]*
 - a. The name and location of the Facility, including the name and address of the applicant if different.
 - b. A statement indicating the availability, conclusions of the preliminary decision and a location where the public may obtain or inspect the preliminary decision and supporting documentation; and

- c. A brief description of the comment procedures and deadlines; and
- d. If the APCO has rejected comments regarding anticipated visibility impacts on a Mandated Class I Federal Area, a notation of the availability of the reasons for such rejection; and [Modified to conform term to 40 CFR 51.301]
- e. If the provisions of District Rule 1600(C) apply:
 - 1. The degree of increment consumption; and
 - 2. Where a copy of the application and preliminary decision may be obtained; and [Added pursuant to USEPA note of 3/31/15]
 - 3. Notice of opportunity to request a public hearing regarding the air quality impact, control technology or other appropriate considerations of the preliminary determination for the Major PSD Facility or Major PSD Modification. [Adds additional requirements from 40 CFR 51.166(q)(2)(iii) necessary for PSD SIP approval.]
- f. If the provisions of District Regulation XII apply and the Federal Operating Permit is being issued concurrently then notice of the opportunity to request a public hearing on the proposed Federal Operating Permit pursuant to District Rule 1207(A)(1)(d).
- (iv) The notification required pursuant to subsection (D)(3)(a)(ii) shall include:
 - a. Identification of the Facility; including the name, address and Facility number; and
 - b. Identification of the permit(s) involved; including permit number, and a brief description of the action taken;
 - c. Information regarding obtaining review of the permit issuance decision by the District Hearing Board pursuant to the provisions of Health & Safety Code §42302.1.

(b) Availability of Documents

- (i) If notice is required pursuant to the provisions of subsection (C)(7)(a) or (b)~~the provisions of District Rule 1303(B) apply to the new or modified Facility~~, then at the time of publication of the notice required above the APCO shall make available for public inspection at the offices of the District or in another prominent place the following information:
 - a. The application and any other information submitted by the applicant; and
 - b. The preliminary decision to grant or deny the Authority to Construct, including any proposed permit conditions and the reasons therefore; and

- c. The supporting analysis for the preliminary decision. [Also satisfies document availability requirement pursuant to 40 CFR 51.166(q)(2)(ii) necessary for PSD SIP approval.]
- (ii) Notwithstanding the above, the APCO is not required to release confidential information. Information shall be considered confidential when:
 - a. The information is a trade secret or otherwise confidential pursuant to California Government Code 6254.7(d); or
 - b. The information is entitled to confidentiality pursuant to 18 U.S.C. ~~1~~§1905; and
 - c. Such information is clearly marked or otherwise identified by the applicant as confidential.

Note: all data submitted, including emissions data, is subject to the provisions of the California Public Records Act and thus is considered public unless specifically excluded by an exemption to that act. "Trade secret" is the most common exclusion. Raw data used to calculate emissions data is also excludable but the resulting emissions data is publically available.

- (c) The APCO shall accept all relevant comment(s) submitted to the District in writing during the thirty (30) day public comment period.

(d) The APCO shall, if requested pursuant to the provisions provided for in the published notice, hold a public hearing regarding the proposed preliminary determination. [See 40 CFR 70.7(h)(1) and (h)(4); 70.3(d) and District Rule 1207(A)(1)(d) and (C)(2)]

(i) Such hearing shall be scheduled no less than thirty (30) days after the publication of a notice of public hearing is published pursuant to the provisions set forth in subsection (D)(3)(a). [Derived from 40 CFR 52.124 10(b)(2) and (c).]

(~~de~~) The APCO shall consider all written comments submitted by the public during the comment period as well as any oral or written comments received at any public hearings(s). [Also satisfies notice requirement pursuant to 40 CFR 51.166(q)(2)(vi) necessary for PSD SIP approval.]

(~~ef~~) The APCO shall provide a summary of any oral comments and keep a ~~record-copy~~ of all written comments received during the public comment period or at any public hearing and shall retain copies of such comments and the District's written responses to such comments in the District files for the particular Facility. [Also satisfies notice requirement pursuant to 40 CFR 51.166(q)(2)(vi) necessary for PSD SIP approval.]

(~~fg~~) If any changes are made to the preliminary decision as a result of comments received from the public, CARB, USEPA or any Affected State the APCO shall send a copy of the proposed changes to CARB and

USEPA for review. [Also satisfies notice requirement pursuant to 40 CFR 51.166(q)(2)(vi) necessary for PSD SIP approval.]

(h) Nothing in this subsection shall be interpreted to limit the availability of documents pursuant to the California Public Records Act (Government Code §§6250 et. seq.) as effective upon the date of the request for documents. [USEPA note of 3/31/16 indicated an effective date might be necessary. Under the California Public Records Act the District is required to comply with California law in effect when the document is requested. NSR, PSD and any non-confidential information related to the permitting process is subject to this requirement regardless of whether or not this provision is specifically stated in the rule.]

(4) Final Action

- (a) After the conclusion of the comment period and consideration of the comments, the APCO shall produce a final New Source Review Document.
- (b) Thereafter, the APCO shall take final action to issue, issue with conditions or ~~decline to issue to deny issuance of~~ the ~~New Source Review~~NSR Document.
 - (i) Such final action shall take place no later than 180 days after the application has been determined to be complete.
 - (ii) The APCO shall not take final action to issue the New Source Review Document if either of the following occurs:
 - a. USEPA objects to such issuance in writing; or
 - b. USEPA has determined, as evidenced by a notice published in the Federal Register, that the applicable implementation plan is not being adequately implemented in the nonattainment area in which the new or modified Facility is located.
- (c) The APCO shall provide written notice of the final action to the applicant, USEPA and CARB. [Also satisfies notice requirement pursuant to 40 CFR 51.166(q)(2)(viii) necessary for PSD SIP approval.]
- (d) If substantive changes have been made to the Preliminary Decision or other ~~New Source Review~~NSR Document after the opening of the public comment period, the APCO shall ~~also cause to be published~~ a notice of final action substantially similar in content to the notice required by pursuant to the provisions of subsection (D)(3)(a) above, ~~in a newspaper of general circulation within the District of the final action. [Derived from proposed Rule 1600(D)(3)(e)(iv)]~~
- (e) If substantive changes are made to the preliminary decision or PSD Document which are substantial enough to require changes to the underlying requirements or which result in a less stringent BACT

determination then the APCO shall reissue and renotice the preliminary decision and draft PSD document pursuant to the provisions of section (D). [Derived from proposed Rule 1600(D)(3)(e)(v)]

(ef) The final New Source Review Documents and all supporting documentation shall remain available for public inspection at the offices of the District. [Also satisfies notice requirement pursuant to 40 CFR 51.166(q)(2)(viii) necessary for PSD SIP approval.]

(g) The final NSR Document may be combined with a final PSD Document produced pursuant to District Rule 1600(D). [Derived from proposed Rule 1600(D)(3)(e)(vii)]

(5) Issuance of ATC(s)

(a) In conjunction with final action on the NSR Document the APCO shall issue ATC(s) for the new or modified Facility pursuant to the provisions of District Regulation II. Such ATC(s) shall contain, at a minimum, the following conditions:

(i) All conditions regarding construction, operation and other matters as set forth in the NSR Document; and

(ii) If a new or modified Facility is a replacement, in whole or in part, for an existing Facility or Emissions Unit on the same or contiguous property, a condition allowing a maximum of one hundred eighty (180) days start up period for simultaneous operation of the new or modified Facility and the existing Facility or Emissions Unit; and

(iii) A condition requiring the Facility to be operated in accordance with the conditions contained on the ATC(s); and

(iv) A condition requiring that the offsets must be obtained prior to the commencement of construction on the new or modified Facility and fully enforceable and in effect by the time the new or modified Facility commences operation. [Provision moved and modified from (D)(5)(b)(ii) which required emissions increases to be "properly offset" prior to commencement of construction. Language shifted to exactly mirror proposed subsection (C)(3)(b)(v) and (vi).]

(b) The APCO shall not issue ATC(s) to a new or modified Facility pursuant to this regulation unless:

(i) The new Facility or Modification to an existing Facility is constructed using BACT for each Nonattainment Air Pollutant when the provisions of Rule 1303(A) apply.

(ii) Any increase in emissions for each Nonattainment Air Pollutant has been properly offset pursuant to the provisions of District Rule 1305 or District Regulation XIV – Emission Reduction Credit

~~Banking prior to Beginning Actual Construction~~ when the provisions of Rule 1303(B) apply. *[Provision partially moved to (D)(5)(a)(iv)]*

a. Such offsetting emissions reductions are real, enforceable, quantifiable, surplus and permanent; and

b. The permits(s) of any Facility or Emissions Unit(s) which provided offsetting emissions reductions have been properly modified and/or valid contracts have been obtained pursuant to the provisions of District Rule 1305 or District Regulation XIV.

(iii) The new or modified Facility complies with all applicable Rules and Regulations of the District.

(iv) The new or modified Facility will not interfere with the attainment or maintenance of any National Ambient Air Quality Standard. *[Moved and modified from former (C)(2)(b). Language modified to better reflect provisions of 40 CFR 51.160(b).]*

(6) Issuance of PTO(s)

(a) After the final action on the New Source Review Document pursuant to this Regulation and/or the issuance of ATC(s) pursuant to the provisions of District Regulation II, the APCO shall deny the subsequent issuance of PTO(s) unless the APCO determines that:

(i) The owner or operator of the new or modified Facility has submitted a completed application for ATC(s) or modification of a PTO.

a. An initial application for PTO(s) may be considered an application for a ATC(s) if the application and the applicant comply with all the provisions of this Regulation.

(ii) The new or modified Facility has been Constructed and is operating in a manner consistent with the conditions as set forth in the NSR document and the ATC(s); and *[Minor language modification suggested by USEPA in comments of 6/14/16.]*

(iii) That the permit(s) of any Facility or Emissions Unit(s) which provided Offsets to the new or modified Facility have been properly modified and/or valid contracts have been obtained pursuant to the provisions of District Rule 1305 or Regulation XIV.

(iv) That the Offsets, if required pursuant to District Rule 1303(B), were real, permanent, quantifiable prior to the commencement of construction of the Facility.

(v) That all conditions contained in the ATC(s) requiring performance of particular acts or events by a date specified have occurred on or before such dates.

(vi) If the actual emissions are greater than those calculated when the ATC was issued:

- a. That the owner/operator has provided additional offsets to cover the difference between the amount of offsets originally provided and the amount of offsets ~~necessary~~ required when calculated pursuant to District Rule 1305 as based upon the actual emissions of the facility; and
- b. That such additional offsets were provided within ninety (90) days of the owner/operator being notified by the APCO that such additional offsets are ~~necessary~~ required.

~~[SIP: Submitted as amended 09/24/01 on _____; Approved 11/13/96, 61 FR 58133, 40 CFR 52.220(e)(239)(I)(A)(1); Submitted as amended 10/27/93 on 3/29/94; Conditional Approval 6/9/82, 47 FR 25013, 40 CFR 52.220(e)(87)(iv)(A) and 40 CFR 52.232(a)(13)(i)(A)]~~
See SIP Table at: <http://www.mdaqmd.ca.gov/Modules/ShowDocument.aspx?documentid=45>

Rule 1320

New Source Review For Toxic Air Contaminants

(A) Purpose

- (1) The purpose of this Rule is to:
 - (a) Set forth the requirements for preconstruction review of all new, Modified, Relocated or Reconstructed Facilities which emits or have the potential to emit any Hazardous Air Pollutant, Toxic Air Contaminant, or Regulated Toxic Substance; and
 - (b) Ensure that any new, Modified, or Relocated Emissions Unit is required to control the emissions of Toxic Air Contaminants as required pursuant to Chapter 3.5 of Part 1 of Division 26 of the California Health and Safety Code (commencing with §39650); and
 - (c) Ensure that any proposed new or Reconstructed Facility or Emissions Unit is required to control the emissions of Hazardous Air Pollutants as required under 42 U.S.C. §7412(g) (FCAA §112(g)). *[Citation added for clarity.]*

(B) Applicability

- (1) General Applicability
 - (a) The provisions of this rule shall be applicable to:
 - (i) Applications for new, Modified or Relocated Facilities or Permit Units which were received by the District on or after the adoption date of this rule.
 - (ii) Permit Units installed without a required Authority to Construct Permit shall be subject to this rule, if the application for a permit to operate such equipment was submitted after the adoption date of this rule.
 - (iii) Applications shall be subject to the version of the District Rules that are in effect at the time the application is received.
- (2) State Toxic New Source Review Program (State T-NSR) Applicability
 - (a) The provisions of Subsection (E) of this Rule shall apply to any new or Modified Emissions Unit which:
 - (i) Emits or has the potential to emit a Toxic Air Contaminant; or
 - (ii) Is subject to an Airborne Toxic Control Measure.

(3) Federal Toxic New Source Review Program (Federal T-NSR) Applicability

- (a) The provisions of Subsection (F) of this Rule shall apply to any new or Reconstructed Facility or new or Modified Emissions Unit which:
 - (i) Emits or has the potential to emit 10 tons per year or more of any single HAP; or
 - (ii) Emits or has the potential to emit 25 tons per year or more of any combination of HAPs; or
 - (iii) Has been designated an Air Toxic Area Source by USEPA pursuant to the provisions of 42 U.S.C. §7412 ([FCAA §112](#)) and the regulations promulgated thereunder. *[Citation added for clarity.]*

(C) Definitions

The definitions contained in District Rule 1301 shall apply unless the term is otherwise defined herein.

- (1) “Air Toxic Area Source” - Any stationary source of Hazardous Air Pollutants that emits or has the potential to emit less than ten (10) tons per year of any single HAP or twenty-five (25) tons per year of any combination of HAPs and which has been designated as an area source by USEPA pursuant to the provisions of 42 U.S.C. §7412 ([FCAA §112](#)). *[Citation added for clarity.]*
- (2) “Airborne Toxic Control Measure” (ATCM) - Recommended methods or range of methods that reduce, avoid, or eliminate the emissions of a TAC promulgated by CARB pursuant to the provisions of California Health and Safety Code §39658.
- (3) “Best Available Control Technology for Toxics” (T-BACT) - the most stringent emissions limitation or control technique for Toxic Air Contaminants or Regulated Toxic Substances which:
 - (i) Has been achieved in practice for such permit unit category or class of source; or
 - (ii) Is any other emissions limitation or control technique, including process and equipment changes of basic and control equipment, found by the APCO to be technologically feasible for such class or category of sources, or for a specific source.
- (4) “Cancer Burden” - The estimated increase in the occurrence of cancer cases in a population resulting from exposure to carcinogenic air contaminants.

- (5) “Case-by-Case Maximum Achievable Control Technology Standard” (Case-by-Case MACT) - An emissions limit or control technology that is applied to a new or Relocated Facility or Emissions Unit where USEPA has not yet promulgated a MACT standard pursuant to 42 U.S.C. §7412(d)(3) (FCAA §112(d)(3)). Such limit or control technique shall be determined pursuant to the provisions of 40 CFR 63.43.
- (6) “Contemporaneous Risk Reduction” - Any reduction in risk resulting from a decrease in emissions of Toxic Air Contaminants at the facility which is real, enforceable, quantifiable, surplus and permanent.
- (7) “Hazard Index” (HI) - The total acute or chronic non-cancer Hazard Quotient for a substance by toxicological endpoint.
- (8) “Hazard Quotient” (HQ) - The estimated ambient air concentration divided by the acute or chronic reference exposure for a single substance and a particular endpoint.
- (9) “Hazardous Air Pollutant” (HAP) - Any air pollutant listed pursuant to 42 U.S.C. §7412(b) (Federal Clean Air Act §112(b)) or in regulations promulgated thereunder.
- (10) “Health Risk Assessment” (HRA) - A detailed and comprehensive analysis prepared pursuant to the most recently published District *Health Risk Assessment Guidelines* to evaluate and predict the dispersion of Toxic Air Contaminants and Regulated Toxic Substances in the environment, the potential for exposure of human population and to assess and quantify both the individual and population wide health risks associated with those levels of exposure. Such document shall include details of the methodologies and methods of analysis which were utilized to prepare the document.
- (11) “High Priority” - A Facility or Emissions Unit for which any Prioritization Score for cancer, acute non-cancer health effects or chronic non-cancer health effects is greater than or equal to ten (10).
- (12) “Intermediate Priority” - A Facility or Emissions Unit for which any Prioritization Score for cancer, acute non-cancer health effects or chronic non-cancer health effects is greater than or equal to one (1) and less than ten (10).
- (13) “Low Priority” - A Facility or Emissions Unit for which all Prioritization Scores for cancer, acute non-cancer health effects or chronic non-cancer health effects are less than one (1).
- (14) “Maximum Achievable Control Technology Standard” (MACT) - The maximum degree of reduction in emissions of HAPs, including prohibitions of such emissions where achievable, as promulgated by USEPA pursuant to 42 U.S.C. §7412(d)(3) (Federal Clean Air Act §112(d)(3)).

- (15) “Maximum Individual Cancer Risk” (MICR) - The estimated probability of a potential maximally exposed individual contracting cancer as a result of exposure to carcinogenic air contaminants over a period of 70 years for residential locations and 46 years for worker receptor locations.
- (16) “Moderate Risk” - A classification of a Facility or Emission Unit for which the HRA Report indicates the MICR is greater than one (1) in one million (1×10^{-6}) at the location of any receptor.
- (17) “Modification” (Modified) - Any physical or operational change to a Facility or an Emissions Unit to replace equipment, expand capacity, revise methods of operation, or modernize processes by making any physical change, change in method of operation, addition to an existing Permit Unit and/or change in hours of operation, including but not limited to changes which results in the emission of any Hazardous Air Pollutant, Toxic Air Contaminant, or Regulated Toxic Substance or which results in the emission of any Hazardous Air Pollutant, Toxic Air Contaminant, or Regulated Toxic Substance not previously emitted.
- (a) A physical or operational change shall not include:
- (i) Routine maintenance or repair; or
 - (ii) A change in the owner or operator of an existing Facility with valid PTO(s); or
 - (iii) An increase in the production rate, unless:
 - a. Such increase will cause the maximum design capacity of the Emission Unit to be exceeded; or
 - b. Such increase will exceed a previously imposed enforceable limitation contained in a permit condition.
 - (iv) An increase in the hours of operation, unless such increase will exceed a previously imposed enforceable limitation contained in a permit condition.
 - (v) An Emission Unit replacing a functionally identical Emission Unit, provided:
 - a. There is no increase in maximum rating or increase in emissions of any HAP, TAC or Regulated Toxic Substance; and
 - b. No ATCM applies to the replacement Emission Unit.
 - (vi) An Emissions Unit which is exclusively used as emergency standby equipment provided:
 - a. The Emissions Unit does not operate more than 200 hours per year; and
 - b. No ATCM applies to the Emission Unit.
 - (vii) An Emissions Unit which previously did not require a written permit pursuant to District Rule 219 provided:
 - a. The Emissions Unit was installed prior to the amendment to District Rule 219 which eliminated the exemption; and

- b. A complete application for a permit for the Emission Unit is received within one (1) year after the date of the amendment to District Rule 219 which eliminated the exemption.
 - (viii) An Emissions Unit replacing Emissions Unit(s) provided that the replacement causes either a reduction or no increase in the cancer burden, MICR, or acute or chronic HI at any receptor location.
- (b) Any applicant claiming exemption from this rule pursuant to the provisions of subsection (C)(17)(a) above:
 - (i) Shall provide adequate documentation to substantiate such exemption; and
 - (ii) Any test or analysis method used to substantiate such exemption shall be approved by the APCO.
- (18) “Office of Environmental Health Hazard Assessment” (OEHHA) - A department within the California Environmental Protection Agency that is responsible for evaluating chemicals for adverse health impacts and establishing safe exposure levels.
- (19) “Prioritization Score” - The numerical score for cancer health effects, acute non-cancer health effects or chronic non-cancer health effects for a Facility or Emissions Unit as determined by the District pursuant to California Health and Safety Code §44360 in a manner consistent with the most recently published District Facility Prioritization Guidelines@; the most recently approved OEHHA Unit Risk Factor for cancer potency factors; and the most recently approved OEHHA Reference Exposure Levels for non-cancer acute factors, and non-cancer chronic factors.
- (20) “Receptor” - Any location outside the boundaries of a Facility at which a person may be impacted by the emissions of that Facility. Receptors include, but are not limited to residential units, commercial work places, industrial work places and sensitive sites such as hospitals, nursing homes, schools and day care centers.
- (21) “Reconstruction” (Reconstructed) - The replacement of components at an existing process or Emissions Unit that in and of itself emits or has the Potential to Emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, whenever:
 - (a) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable process or production unit; and
 - (b) It is technically and economically feasible for the reconstructed major source to meet the applicable MACT Standard for new sources.

- (22) “Reference Exposure Level” (REL) - The ambient air concentration level expressed in microgram/cubic meter (μm^3) at or below which no adverse health effects are anticipated for a specified exposure.
- (23) “Regulated Toxic Substance” - A substance which is not a Toxic Air Contaminant but which has been designated as a chemical substance which poses a threat to public health when present in the ambient air by CARB in regulations promulgated pursuant to California Health and Safety Code §44321.
- (24) “Relocation” (Relocated) - The removal of an existing permit unit from one location in the District and installation at another location. The removal of a permit unit from one location within a Facility and installation at another location within the same Facility is a relocation only if an increase in MICR in excess of one in one million (1×10^{-6}) occurs at any receptor location.
- (25) “Significant Health Risk” - A classification of a Facility for which the HRA Report indicates that the MICR is greater than or equal to ten (10) in a million (1×10^{-5}) or that the HI is greater than or equal to one (1).
- (26) “Significant Risk” - A classification of a Facility or Emissions Unit for which the HRA Report indicates that the MICR is greater than or equal to one hundred (100) in a million (1×10^{-4}) or that the HI is greater than or equal to ten (10).
- (27) “Toxic Air Contaminant” (TAC) - an air pollutant which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health and has been identified by CARB pursuant to the provisions of California Health and Safety Code §39657, including but not limited to, substances that have been identified as HAPs pursuant to 42 U.S.C. ~~See §~~-7412(b) (Federal Clean Air Act §112(b)) and the regulations promulgated thereunder. *[Typographical error correction]*
- (28) “Toxics Emission Inventory Report” - An emissions inventory report for TAC and Toxic Substances prepared for a Facility or Emissions Unit pursuant to the District’s *Comprehensive Emission Inventory Guidelines*.
- (29) “Unit Risk Factor” (URF) - the theoretical upper bound probability of extra cancer cases occurring from the chemical when the air concentration is expressed in exposure units of per microgram/cubic meter ($(\mu\text{m}^3)^{-1}$).

(D) Initial Applicability Analysis

- (1) The APCO shall analyze the Comprehensive Emissions Inventory Report or Comprehensive Emissions Inventory Report Update which was submitted pursuant to District Rule 1302(B)(1)(b) within thirty (30) days of receipt or after such longer period as the APCO and the applicant agree to in writing, to determine if the new, Modified, Relocated, Emissions Unit or Reconstructed Facility is subject to provisions (E) or (F) of this rule.

- (a) If the Facility or Emissions Unit is subject to the State T-NSR pursuant to Section (B)(2), then the APCO shall perform the analysis required pursuant to Section (E).
- (b) If the Facility is subject to the Federal T-NSR pursuant to Section (B)(3), then the APCO shall perform the analysis required pursuant to Section (F).
- (c) If the Facility or Emissions Unit is subject to both the State T-NSR pursuant to Section (B)(2) and the Federal T-NSR pursuant to Section (B)(3) then the APCO shall perform the analysis required pursuant to Section (E) followed by the analysis pursuant to Section (F).
- (d) If the provisions of this Rule are not applicable to the Facility or Emissions Unit then the APCO shall continue the permit analysis process commencing with the provisions of District Rule 1302(C)(~~56~~).

(E) State Toxic New Source Review Program Analysis (State T-NSR)

(1) ATCM Requirements

- (a) The APCO shall analyze the application and Comprehensive Emission Inventory Report within thirty (30) days of receipt or after such longer period as the APCO and the applicant agree to in writing, for the new or modified Emission Units(s) and determine if any currently enforceable ATCM applies to the Emissions Unit(s).
- (b) If an ATCM applies to the new or modified Emission Units(s) the APCO shall:
 - (i) Add the requirements of the ATCM or of any alternative method(s) submitted and approved pursuant to Health & Safety Code §39666(f) to any ATC or PTO issued pursuant to the provisions of this Regulation or District Regulation II whichever process is utilized to issue the permit(s); and
 - (ii) Continue the analysis with Section (E)(2).
- (c) If no ATCM applies to the proposed new or modified Emissions Unit the APCO shall continue the analysis with Section (E)(2).

(2) Emission Unit Prioritization Score

- (a) The APCO shall analyze the application and Comprehensive Emission Inventory Report for the Emission Unit(s) and calculate three (3) prioritization scores for each new or modified Emission Unit.
 - (i) Prioritization Scores shall be calculated for carcinogenic effects, non-carcinogenic acute effects and non-carcinogenic chronic effects.

- (ii) Prioritization Scores shall be calculated utilizing the most recently approved CAPCOA *Facility Prioritization Guidelines*; the most recently approved OEHHHA Unit Risk Factor for cancer potency factors; and the most recently approved OEHHHA Reference Exposure Levels for non-cancer acute factors, and non-cancer chronic factors.
 - (iii) Prioritization Scores may be adjusted utilizing any or all of the following factors if such adjustment is necessary to obtain an accurate assessment of the Facility.
 - a. Multi-pathway analysis
 - b. Method of release.
 - c. Type of Receptors potentially impacted.
 - d. Proximity or distance to any Receptor.
 - e. Stack height.
 - f. Local meteorological conditions.
 - g. Topography of the proposed new or Modified Facility and surrounding area.
 - h. Type of area.
 - g. Screening dispersion modeling.
 - (b) If all Prioritization Scores indicate that the Emission Unit is categorized as Low or Intermediate Priority, the APCO shall:
 - (i) Determine if the Facility is subject to Federal T-NSR pursuant to subsection (B)(3) and continue the analysis with Section (F).
 - (ii) If the Facility or Emission Unit is not subject to Federal T-NSR, continue the permit analysis process commencing with the provisions of District Rule 1302(C)(~~56~~). [Correction of cross reference.]
 - (c) If any Prioritization Score indicates that the Emission Unit is categorized as High Priority, the APCO shall continue the analysis pursuant to subsection (E)(3).
- (3) Emission Unit Health Risk Assessment
- (a) The APCO shall notify the applicant in writing that the applicant is required to prepare and submit an HRA for the new or modified Emission Units(s).
 - (i) The applicant shall prepare the HRA for the new or modified Emission Units(s) in accordance with the District's most recently issued *Health Risk Assessment Plan and Report Guidelines*.
 - (ii) The HRA for the emission unit shall be submitted by the applicant no later than thirty (30) days after receipt of the written notification from the APCO or after such longer time that the applicant and the APCO may agree to in writing.

- (iii) The HRA may include a demonstration of Contemporaneous Risk Reduction pursuant to subsection (E)(4).
- (b) The APCO shall approve or disapprove the HRA for the new or modified Emission Units(s) within thirty (30) days of receipt of the plan from the applicant or after such longer time that the applicant and the APCO may agree to in writing.
- (c) After the approval or disapproval of the HRA for the new or modified Emission Units(s) the APCO shall transmit a written notice of the approval or disapproval of the HRA plan immediately to the applicant at the address indicated on the application.
 - (i) If the HRA for the new or modified Emission Units(s) was disapproved the APCO shall specify the deficiencies and indicate how they can be corrected.
 - a. Upon receipt by the District of a resubmitted HRA a new thirty (30) day period in which the APCO must determine the approval or disapproval of the HRA shall begin.
- (d) The APCO shall analyze the HRA for the new or modified Emission Unit(s) to determine the cancer burden for each Emissions Unit(s).
 - (i) If the cancer burden is greater than 0.5 in the population subject to a risk of greater than or equal to one in one million (1×10^{-6}) the APCO shall immediately notify the applicant that the application will be denied in its current form unless the applicant submits a revised application which reduces the cancer burden to equal or below 0.5 within thirty (30) days of receipt of the notice or after such longer time as both the applicant and the APCO may agree to in writing.
 - a. If the applicant does not submit a revised application within the time period specified the APCO shall notify the applicant in writing that the application has been denied.
 - b. If the applicant submits a revised application the analysis process shall commence pursuant to District Rule 1302 as if the application was newly submitted.
 - (ii) If the cancer burden is less than or equal to 0.5 in the population subject to a risk of greater than or equal to one in one million (1×10^{-6}) the APCO shall continue with the analysis pursuant to subsection (E)(3)(e).
- (e) The APCO shall analyze the HRA for the new or modified Emissions Unit(s) and determine the risk for each Emissions Unit.
 - (i) If the HRA indicates that the Emissions Unit(s) are less than a Moderate Risk then the APCO shall continue the analysis pursuant to section (E)(3)(f).

- (ii) If the HRA indicates that the Emissions Unit(s) are a Moderate Risk but less than a Significant Health Risk then the APCO shall:
 - a. Add requirements for each Emissions Unit sufficient to ensure T-BACT is applied to any ATC or PTO issued pursuant to the provisions of District Regulation XIII or Regulation II whichever process is utilized to issue the permit(s); and
 - b. Continue with the analysis pursuant to subsection (E)(3)(f).
 - (iii) If the HRA indicates that an Emission Unit is a Significant Health Risk but less than a Significant Risk then the APCO shall:
 - a. Add requirements for each Emissions Unit sufficient to ensure T-BACT is applied to any ATC or PTO issued pursuant to the provisions of District Regulation XIII or Regulation II whichever process is utilized to issue the permit(s); and
 - b. Require the Facility to perform a public notification pursuant to the District's *Public Notification Guidelines* and District Rule 1520; and
 - c. Continue with the analysis pursuant to subsection (E)(3)(f).
 - (iv) If the HRA indicates that an Emissions Unit is a Significant Risk then the APCO shall immediately notify the applicant that the application will be denied in its current form unless the applicant submits a revised application which reduces the risk below that of Significant Risk within thirty (30) days of receipt of the notice or after such longer time as both the applicant and the APCO may agree to in writing.
- (f) If the HRA Report indicates that all new or modified Emission Unit(s) are less than a Significant Risk then the APCO shall determine if the Facility or Emission Unit is subject to Federal T-NSR pursuant to subsection (B)(3).
- (i) If the Facility or Emission Unit is subject to the Federal T-NSR, continue the analysis with Section (F).
 - (ii) If the Facility or Emission Unit is not subject to the Federal T-NSR, continue the permit analysis process commencing with the provisions of District Rule 1302(C)(5).

(4) Contemporaneous Risk Reduction

- (a) Applicant may, as a part of an HRA required pursuant to subsection (E)(3), provide Contemporaneous Risk Reduction to reduce the Facility risk from the new or modified Emissions Units.
- (b) Contemporaneous Risk Reductions shall be:
 - (i) Real, enforceable, quantifiable, surplus and permanent; and

- (ii) Calculated based on the actual average annual emissions as determined by the APCO based upon verified data for the two year period immediately preceding the date of application; and
 - (iii) Accompanied by an application for modification of the Emission Unit(s) which cause the Contemporaneous Risk Reduction.
- (c) The APCO shall analyze the Contemporaneous Risk Reduction and determine if any receptor will experience a total increase in MCIR due to the cumulative impact of the Emission Unit(s) and the Emission Unit(s) which cause the Contemporaneous Risk Reduction.
 - (i) The APCO shall deny a Contemporaneous Risk Reduction when such an increase occurs unless:
 - a. The Contemporaneous Risk Reduction is:
 - 1. Within 328 feet (100 meters) of the new or modified Emission Unit(s); or
 - 2. No receptor location will experience a total increase in MCIR of greater than one in one million (1.0×10^{-6}) due to the cumulative impact of the Emission Unit(s) and the Emission Unit(s) which cause the Contemporaneous Risk Reduction.
 - b. T-BACT is applied to any Emissions Unit which is a Moderate Risk or greater.
- (d) The APCO shall analyze the Contemporaneous Risk Reduction and determine if any receptor will experience an increase in total acute or chronic HI due to the cumulative impact of the new or modified Emission Unit(s) and the Emission Unit(s) which cause the Contemporaneous Risk Reduction.
 - (i) The APCO shall deny a Contemporaneous Risk Reduction when such an increase occurs unless:
 - a. The Contemporaneous Risk Reduction is:
 - 1. Within 328 feet (100 meters) of the new or modified Emission Unit(s); or
 - 2. No receptor location will experience an increase in total acute or chronic HI of more than .1 due to the cumulative impact of the new or modified Emission Unit(s) and the Emission Unit(s) which cause the Contemporaneous Risk Reduction; and
- (e) Any Contemporaneous Risk Reduction must occur before the start of operations of the Emissions Unit(s) which increase the risk.

(F) Federal Toxic New Source Review Program Analysis (Federal T-NSR)

(1) MACT Standard Requirements

- (a) The APCO shall analyze the application and Comprehensive Emission Inventory and determine if any currently enforceable MACT standard applies to the new or Reconstructed Facility or Emissions Unit.
- (b) If a MACT standard applies to the new or Reconstructed Facility or Emissions Unit the APCO shall:
 - (i) Add the requirements of the MACT standard to any ATC or PTO issued pursuant to the provisions of District Regulation XIII or Regulation II whichever process is utilized to issue the permit(s); and
 - (ii) Continue the analysis with District Rule 1302(C)(~~56~~).
- (c) If no MACT standard applies to the new or Reconstructed Facility or Emissions Unit the APCO shall continue the analysis with Section (G)(2).

(2) Case-by-Case MACT Standards Requirements

- (a) The APCO shall determine if a Case-by-Case MACT standard applies to the proposed new or Reconstructed Facility or Emissions Unit.
- (b) If a Case-by-Case MACT standard applies to the new or Reconstructed Facility or Emissions Unit the APCO shall:
 - (i) Notify the applicant in writing that the applicant is required to prepare and submit a Case-by-Case MACT application.
 - a. The applicant shall prepare the Case-by-Case MACT application in accordance with the provisions of 40 CFR 63.43(e).
 - b. The Case-by-Case MACT application shall be submitted no later than thirty (30) days after receipt of the written notification from the APCO or after such longer time that the applicant and the APCO may agree to in writing.
 - (ii) Preliminarily approve or disapprove the Case-by-Case MACT application within 30 days after receipt of the application or after such longer time as the applicant and the APCO may agree to in writing.
 - (iii) After the approval or disapproval of the Case-by-Case MACT application the APCO shall transmit a written notice of the approval or disapproval to the applicant at the address indicated on the application.
 - a. If the Case-by-Case MACT application is disapproved the APCO shall specify the deficiencies, indicate how they can be corrected and specify a new deadline for submission of a revised Case-by-Case MACT application.

- (iv) The APCO shall review and analyze the Case-by-Case MACT application and submit it to USEPA along with any proposed permit conditions necessary to enforce the standard.
 - (v) Provide public notice and comment of the proposed Case-by-Case MACT standard determination pursuant to the procedures in 40 CFR 63.42(h).
 - a. Such notice may be concurrent with the notice required under District Rule 1302(~~DC~~)(~~37~~)(a) if notice is required pursuant to that provision. *[Correction of cross reference.]*
 - (vi) Add the approved Case-by-Case MACT standard requirements or conditions to any ATC or PTO issued pursuant to the provisions of District Regulation XIII or Regulation II whichever process is utilized to issue the permit(s); and
 - (vii) Continue the analysis with District Rule 1302(C)(~~56~~). *[Correction of cross reference.]*
- (c) If a Case-by-Case MACT standard does not apply to the new or Reconstructed Facility or Emissions Unit the APCO shall continue the analysis with District Rule 1302(C)(~~56~~). *[Correction of cross reference.]*

(G) Most Stringent Emission Limit or Control Technique

- (1) If a Facility or Emission Unit is subject to more than one emission limitation pursuant to sections (E) or (F) of this rule the most stringent emission limit or control technique shall be applied to the Facility or Emission Unit.
 - (i) Notwithstanding the above, if a Facility or Emission Unit is subject to a published MACT standard both the MACT standard and the emissions limit or control technique, if any, required pursuant to sections (E) shall apply unless the District has received delegation from USEPA for that particular MACT standard pursuant to the provisions of 42 U.S.C. §7412(l) (FCAA §112(l)).

(H) Interaction with Air Toxic “Hot Spots” Program for Existing Facilities

- (1) Nothing in this Rule shall be construed to exempt an existing Facility from compliance with the provisions of District Rule 1520.

[SIP: Not SIP]

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Appendix “B”
Public Notice Documents

1. Proof of Publication – Daily Press: May 27, 2016
2. Proof of Publication – Riverside Press Enterprise: May 27, 2016

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PROOF OF PUBLICATION

(2015.5 C.C.P.)

**STATE OF CALIFORNIA,
County of San Bernardino**

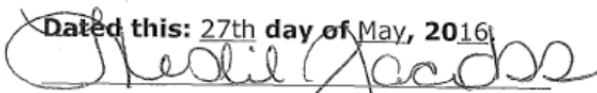
I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the publisher of the DAILY PRESS, a newspaper of general circulation, published in the City of Victorville, County of San Bernardino, and which newspaper has been adjudicated a newspaper of general circulation by the Superior Court of the County of San Bernardino, State of California, under the date of November 21, 1938, Case number 43096, that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

May 27

All in the year 2016.

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated this: 27th day of May, 2016



Signature

Leslie Jacobs

This space is the County Clerk's Filing Stamp

**FILED
MOJAVE DESERT AQMD
CLERK OF THE BOARD**

JUN 01 2016

BY 

Proof of Publication of NOTICE OF HEARING

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the Governing Board of the Mojave Desert Air Quality Management District (MDAQMD) will conduct a public hearing on June 27, 2016 at 10:00 A.M. to amend the Regulation XIII - New Source Review and adoption of Rule 1600 - Prevention of Significant Deterioration.

SAID HEARING will be conducted in the Governing Board Chambers located at the MDAQMD offices 14305 Park Avenue, Victorville, CA 92392-2310 where all interested persons may be present and be heard. Copies of the proposed amendments to Regulation XIII - New Source Review, new Rule 1600 - Prevention of Significant Deterioration and the Staff Report are on file and may be obtained from the Clerk of the Governing Board at the MDAQMD Offices. Written comments may be submitted to Eldon Heaston, Executive Director at the above office address. Written comments must be received no later than June 27, 2016 to be considered. If you have any questions you may contact Karen Nowak at (760) 245-1661 extension 6810 for further information. Traducción esta disponible por solicitud.

The Federal Clean Air Act (CAA) requires that states/local air districts adopt a preconstruction review program for all new and modified stationary sources of pollutants for which their jurisdiction has been classified nonattainment for the Federal Ambient Air Quality Standards (FAAQs) (See 42 USC §7511a(b)). This program is commonly referred to as "New Source Review" or "Nonattainment New Source Review" (NSR or NANSR) and must comply

with the applicable Federal implementing regulations which are primarily contained in 40 CFR 51.160 et seq. In addition, the California Clean Air Act (CCAA) requires local air districts to not only have a permitting program (Health & Safety Code §42300 et seq.) but also to develop appropriate plans to attain and maintain the State Ambient Air Quality Standards (SAAQS) (Health & Safety Code §420910 et seq.). The Mojave Desert Air Quality Management District (MDAQMD or District) has complied with these two requirements in part through the adoption, amendment and implementation of Regulation XIII - New Source Review.

The CAA also requires that a preconstruction review be performed on certain large stationary sources of attainment air pollutants to ensure that degradation of the air quality does not occur in areas which are currently in compliance with the FAAQS (42 U.S.C. §7470 et seq.). This program is commonly referred to as "Prevention of Significant Deterioration" (PSD) and must also comply with applicable Federal implementing regulations which are primarily contained in 40 CFR 52.21. Historically this type of preconstruction review has been performed for many local air districts, the MDAQMD included, by the regional office of USEPA.

USEPA has recently been requesting and requiring local air districts to adopt rules and regulation such that they can implement the PSD preconstruction review process and be delegated the authority to issue PSD permits at the local level. At the same time USEPA is requiring that all local districts' rules involving NANSR provide public notice for a significant

number of so called "minor" permitting activities. Furthermore, the Federal Operating Permit Program (Title V Program) contains provisions which would, if approved by USEPA, allow NANSR, PSD and Title V permits and permit amendments to be issued simultaneously. These provisions, called "Enhanced NSR," enable a delegated air district to cut down substantially on the notice and review time required to issue Federal Operating Permits (FOPs) and their amendments.

The proposed amendments to Regulation XIII - New Source Review and proposed new Rule 1600 - Prevention of Significant Deterioration are designed to allow USEPA to delegate PSD authority, adjust the noticing requirements of NANSR to comply with recent USEPA directives regarding the noticing of "minor" source permitting activities, and to allow the MDAQMD to request Enhanced NSR designation such that permitting activities for facilities subject to Title V may be performed concurrently. Additionally the proposed amendments and new rule adoption will clarify some provisions, provide appropriate cross-citations, and correct some minor discrepancies with USEPA requirements contained in the current rules.

Pursuant to the California Environmental Quality Act (CEQA) the MDAQMD has determined that a Categorical Exemption (Class 8 - 14 Cal. Code Reg. §15308) applies and has prepared a Notice of Exemption for this action.

Deanna Hernandez
Executive Lead
Mojave Desert Air Quality
Management District

Published in the
Daily Press
May 27, 2016
(F-04)

THE PRESS-ENTERPRISE

1825 Chicago Ave, Suite 100
Riverside, CA 92507
951-684-1200
951-368-9018 FAX

PROOF OF PUBLICATION (2010, 2015.5 C.C.P)

Publication(s): The Press-Enterprise

PROOF OF PUBLICATION OF

Ad Desc.:

I am a citizen of the United States. I am over the age of eighteen years and not a party to or interested in the above entitled matter. I am an authorized representative of THE PRESS-ENTERPRISE, a newspaper in general circulation, printed and published daily in the County of Riverside, and which newspaper has been adjudicated a newspaper of general circulation by the Superior Court of the County of Riverside, State of California, under date of April 25, 1952, Case Number 54446, under date of March 29, 1957, Case Number 65673, under date of August 25, 1995, Case Number 267864, and under date of September 16, 2013, Case Number RIC 1309013; that the notice, of which the annexed is a printed copy, has been published in said newspaper in accordance with the instructions of the person(s) requesting publication, and not in any supplement thereof on the following dates, to wit:

05/27/2016

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Date: May 27, 2016

At: Riverside, California

Legal Advertising Representative, The Press-Enterprise

MOJAVE DESERT AQMD
14306 PARK AVE
VICTORVILLE, CA 92392

Ad Number: 0010168000-01

P.O. Number:

Ad Copy:

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the Governing Board of the Mojave Desert Air Quality Management District (MDAQMD) will conduct a public hearing on June 27, 2016 at 10:00 A.M. to amendment of Regulation XIII - New Source Review and adoption of Rule 1600 - Prevention of Significant Deterioration.

SAID HEARING will be conducted in the Governing Board Chambers located at the MDAQMD offices 14306 Park Avenue, Victorville, CA 92392-2310 where all interested persons may be present and be heard. Copies of the proposed amendments to Regulation XIII - New Source Review, new Rule 1600 - Prevention of Significant Deterioration and the Staff Report are on file and may be obtained from the Clerk of the Governing Board at the MDAQMD Offices. Written comments may be submitted to Eldon Heaston, Executive Director at the above office address. Written comments must be received no later than June 27, 2016 to be considered. If you have any questions you may contact Karen Nowak at (760) 245-1661 extension 6810 for further information. Traducción esta disponible por solicitud.

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The CAA also requires that a preconstruction review be performed on certain large stationary sources of attainment air pollutants to ensure that degradation of the air quality does not occur in areas which are currently in compliance with the FAAQS (42 U.S.C. §57470 et seq.). This program is commonly referred to as "Prevention of Significant Deterioration" (PSD) and must also comply with applicable Federal implementing regulations which are primarily contained in 40 CFR 52.21. Historically this type of preconstruction review has been performed for many local air districts, the MDAQMD included, by the regional office of USEPA.

USEPA has recently been requesting and requiring local air districts to adopt rules and regulation such that they can implement the PSD preconstruction review process and be delegated the authority to issue PSD permits at the local level. At the same time USEPA is requiring that all local districts' rules involving NANSR provide public notice for a significant number of so called "minor" permitting activities. Furthermore, the Federal Operating Permit Program (Title V Program) contains provisions which would, if approved by USEPA, allow NANSR, PSD and Title V permits and permit amendments to be issued simultaneously. These provisions, called "Enhanced NSR," enable a delegated air district to cut down substantially on the notice and review time required to issue Federal Operating Permits (FOPs) and their amendments.

The proposed amendments to Regulation XIII - New Source Review and proposed new Rule 1600 - Prevention of Significant Deterioration are designed to allow USEPA to delegate PSD authority, adjust the noticing requirements of NANSR to comply with recent USEPA decisions regarding the noticing of "minor" source permitting activities, and to allow the MDAQMD to request Enhanced NSR designation such that permitting activities for facilities subject to Title V may be performed concurrently. Additionally the proposed amendments and new rule adoption will clarify some provisions, provide appropriate cross-citations, and correct some minor discrepancies with USEPA requirements contained in the current rules.

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Deanna Hernandez
Executive Lead
Mojave Desert Air Quality Management District 5/27

FILED
MOJAVE DESERT AQMD
CLERK OF THE BOARD

JUN 02 2016

BY

Appendix “C”

Public Comments and Responses

1. USEPA, Comments of 3/31/2016 (Commenter #1)
2. S. Head, Yorke Engineering, LLC, Comments of 4/19/2016 (Commenter #2).
3. G. Rubenstein, Sierra Research, Comments of 6/6/2016 (Commenter #3).
4. USEPA, Comments of 6/14/2016 (Commenter #1).
5. CARB, Comments of 7/06/2016 (Commenter #4).

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Responses to USEPA Comments of 3/31/16 (Commenter #1)

Please Note: USEPA's Comments of 3/31/16 were provided in comments inserted to the D1: 3/3/2016 redline version of Rules 1600 & 1302. Comments have been copied and section references have been provided to consolidate space in the Staff Report. A copy of the full redline including commentary is available upon request and will ultimately be included in the Rule Draft section of the Rule Archive document.

Rule 1302 Comments:

1-1. **Comment YL1:** (B)(1)(a)(i)a.- This does not really satisfy the requirements of 51.160 re application content, please provide some minimum elements.

Response: This subsection is in part a “catch-all” allowing the District to require any and all information necessary to properly issue the permit. A specific listing of elements might be interpreted in the future to exclude the necessity of providing other information which is not specifically mentioned. Therefore, the District has added an “including but not limited to” phrase which enumerates the items contained in 40 CFR 51.160 without excluding other potentially necessary items.

1-2. **Comment YL2:** (B)(1)(a)(i)b. - This provides actual emissions, but not PTE. The applicant must submit data adequate to calculate the PTE of the facility, baseline emissions for modified units and PTE of each EU in a project.

Response: The requirement to provide data regarding Potential To Emit (PTE) is already existent pursuant to the provisions of (B)(1)(A)(i)a. in that it is required for most, if not all, of the analysis required to be performed in subsection (C) of this rule. For additional clarity the District has added this element to the “including but not limited to” list in subsection (B)(1)(A)(i)a.

1-3. **Comment YL3:** (B)(1)(a)(ii) - Consider renaming this a Rule 1310 analysis or federal NSR ?

Response: Please note that Rule 1310 only deals with Federal Major Facilities. The offset thresholds contained in Rule 1303(B) are in some cases much less than the Federal Major Facility Threshold for a particular nonattainment air pollutant. Thus, a particular new or modified Facility or Emissions Unit might require offsets but not be classified as a Federal Major Facility for the particular nonattainment air pollutant. Therefore the District will not rename this section to avoid confusion by Non-Federal Major Facilities which happen to need offsetting emissions reductions.

1-4. **Comment YL4:** (B)(1)(a)(ii)a.1. - Only required for major sources, Does 1303 only require offsets from MS?

Response: Please see response to Comment 3 above regarding the differential between the 1303(B) offset threshold and Federal Major Facilities. The exemption from this requirement

for Facilities requiring offsets which happen to not be Federal Major Facilities has been moved from this provision to Subsection (B)(1)(a)(ii)a.4. so that the exemption can also be applied to the Statewide Compliance Certification requirement without unnecessary duplicative language.

Please also note that the California Environmental Quality Act (CEQA) provisions applicable to the new or modified Facility will in all likelihood provide an analysis sufficient to satisfy this provision. Most proposed new or modified Facilities will therefore have performed this type of analysis whether or not it is mandated.

1-5. **Comment YL5:** (B)(1)(a)(ii)a.2. - This exception also applies to the statewide compliance cert as well.

Response: Please see response to Comment 4 above.

1-6. **Comment YL6:** (B)(1)(a)(ii)a.2. - Note: Not yet SIP approved. [In reference to District Rule 1310.]

Response: Status of District Rule 1310 may be dependent upon interpretation(s) of California Health and Safety Code §§42500 et seq.

1-7. **Comment YL7:** (B)(1)(a)(ii)a.3. - What if the source is a FMM [Federal Major Modification]? Shouldn't this read an analysis sufficient to determine if the source is or is not a FMM.

Response: Section language has been modified for additional clarity.

1-8. **Comment YL8:** (B)(1)(a)(iii) - Should this be limited to FMF and FMM?

Response: Section language has been modified for additional clarity.

1-9. **Comment YL9:** (B)(1)(a)(iii)a. - EPA removed the letters and now just has an alpha list of definitions. [In reference to 40 CFR 51.301(o)].

Response: Citation has been corrected.

1-10: **Comment BL10:** (B)(1)(a)(iii)a. - 51.307(c) is the correct citation for the required analysis factors. [In reference to 40 CFR 51.301(c).]

Response: Citation has been corrected. District is considering broadening this citation to include the entire 40 CFR 51 subpart P (commencing with section 51.300) to avoid inadvertently omitting a requirement.

1-11. **Comment YL11:** (B)(1)(a)(v) - Consider renaming Rule 1600 analysis?

Response: Comment noted. District will retain current nomenclature to avoid confusion of regulated Facilities.

1-12. **Comment BL12:** (B)(1)(a)(v)a.5. – See comment. [Potentially a cross reference to an incorrect cross reference contained in subsection (B)(2)(c).]

Response: Citation cross reference in subsection (B)(2)(c) has been corrected.

1-13. **Comment YL13:** (B)(1)(b) - This requirement applies to all apps, not just PSD, so inappropriate to cite SPD as basis.

Response: Please note requirement has not changed from currently existing version of the rule. Provision was originally developed to satisfy the lowest common denominator of all existing State and Federal timing limitations contained in statute or regulation. Citation is provided for reference only to indicate which provision had the smallest time period specified.

1-14. **Comment YL14:** (B)(2)(c) - All references to this term must be updated. [In reference to Class I Area as defined in 51.301(o).]

Response: Term has been modified to read “Mandatory Class I Federal Area” and citation has been corrected throughout.

1-15. **Comment YL15:** (B)(3)(a) - Where is this list? (B)(1)(a)(i)a specifies “enough info” no list.

Response: Provision modified to cross reference subsection (B)(1)(a)(i)a. or the list of incompleteness pursuant to subsection (B)(2)(a)(i). See also response to Comment 1 above.

1-16. **Comment YL16:** (C)(2)(a)(ii) - How do you know what the “applicable” ones are? I think the “new or modified” is better language.

Response: Language has been modified to cross reference District Rule 1303(A) which specifies thresholds at which Emissions Units/Permit Units would require Best Available Control Technology (BACT). Please note that District Rule 1303(A) provides that a *modified* Emissions Unit emitting or having the potential to emit <25lbs/day of a nonattainment air contaminant at a Major Facility OR *any new or modified* Emissions Unit emitting or having the potential to emit <25lbs/day of a nonattainment air contaminant at a Non-Major Facility would not require BACT.

1-17. **Comment YL17:** (C)(2)(a)(ii) - Isn't a “modified” ATC or PTO also issued? I don't think you need “modified” here.

Response: Language modification in response to Comment 16 above has rectified this issue.

1-18. **Comment YL18:** (C)(2)(a)(iii)b. - Same comments as above. [In reference to comments 16 and 17 above.]

Response: See response to comments 16 and 17 above.

1-19. **Comment YL19:** (C)(3)(b)(i) - This provision needs to be updated to be consistent with Surplus. [In reference to RACT upon use provision found in District Rule 1305(C)(4)]

Response: Comment Noted. Subsection (C)(3)(b) requires all offsets to be eligible for use pursuant to the provisions of District Rule 1305. District Rule 1305(B)(1)(a) indicates that all offsets are required to be calculated and meet the requirements of Regulation XIV – *Emission Reduction Credit Banking*. Regulation XIV requires all proposed offsets to be Real, Permanent, Quantifiable, Enforceable and Surplus (See District Rule 1401(DD) for the definition of Surplus). Pursuant to the guidance provided by a USEPA Memo of 8/26/1994 by John Seitz interpreting the provisions of Federal Clean Air Act §173(c)(1) the “RACT upon use” adjustment is a necessary part of determining any proposed offsets surplus at the time when they are proposed to be used. This particular provision is a procedural reminder that a “RACT upon use” analysis is necessary prior to proceeding onward.

1-20. **Comment YL20:** (C)(3)(b)(ii)a. - This is not what is required by 165(a)(ii)(C).

Response: Language has been modified to reference the appropriate regulatory section presuming that cited reference should be 40 CFR 51.165(a)(3)(ii)(C).

1-21. **Comment YL21:** (C)(3)(b)(iii)a. - How do you envision this approval will be granted?

Response: As with all approvals from other agencies required for permit issuance as referenced in Regulation XIII approval will generally be presumed by silence during the comment/review period to avoid unintentional delays during the approval process unless the underlying requirements mandate specific approval in a particular format. If specific approval, typically written approval, is required for particular items the District requests USEPA to provide citations to the statutory provision, regulations and/or guidance documents mandating such specific written approval. Comments during the comment/review period are required to be addressed and if approval issues are present this would necessitate close consultation with the commenter to resolve the issue.

1-22. **Comment YL22:** (C)(3)(b)(v.) - This is not a required milestone. CAA 173(c)(1) required that the offsets must be enforceable by the time of permit issuance. EPA views this that the offsets must be identified and a permit condition to surrender them no later than commencing operation is required. The District is free to require surrender by commencement of construction, but I added the federal requirement, by the time operation is commenced.

Response: This language is currently in Rule 1302(C)(5)(b)(v). Since the subject matter involves offsets the District cannot make it less stringent pursuant to the provisions of California Health & Safety Code §§42500 et seq. by removing such language.

In practice the District has always interpreted the term “obtained” to mean having enough legal control over the particular offsets such that the required amount needed may be surrendered immediately upon commencement of operations. Evidence of such control has historically been provided by binding contractual agreements, ownership of ERC certificates and even, in some

cases, surrender of such ERC certificates prior to commencement of construction. All permitting actions requiring offsets contain one or more conditions in the resultant permits indicating when such offsets shall be effective and/or when ERC certificates shall be surrendered. An additional paragraph has been added as (C)(5)(b)(vi) to clarify the District's current practice and mandate that offsets must be effective no later than the date the new or modified Facility commences operation of the equipment in question. (See: 42 USC 7503(a)(1)(a) and (c)(1); 57 FR 13498, 13553 (4/16/92); 57 FR 55620, 55624 (11/25/92); 40 CFR 51.165(a)(3); 40 CFR 51 Appendix S V.A.1.; and guidance found in USEPA Memorandum: Offsets Required Prior to Permit Issuance dated 6/14/1994.)

1-23. **Comment YL23:** (C)(6)(a) - I revised the language in (a) because this section is supposed to determine if the requirements of Rule 100 are applicable. The way to do that is to determine if the project is a new MS or MM, OR a request for a PAL. If so, then the analysis would proceed. The current language requires a determination of "if any requirements apply." But really this can only be determined by performing the emission calculations.

Response: Language modified to clarify that this analysis is intended to not only determine applicability but also what specific PSD provisions, if any, apply to the particular proposed action. A cross reference to the PSD applicability analysis submitted pursuant to subsection (B)(1)(a)(i)c. has also been added which should contain the necessary emissions calculations to make these determinations.

1-24. **Comment YL24:** (C)(7)(c)(ii) - Public notice is required for all permit actions above specified thresholds, not just NA pollutants. The table needs to include and set thresholds for the other NAAQS.

Response: Term nonattainment Air Pollutant has been replaced with Regulated Air Pollutant to cover both nonattainment and attainment pollutants. Table has been replaced with thresholds set at 80% of the Major Source Threshold for Nonattainment Air Pollutant OR the Federal Significance Level for Regulated Air Pollutant as specified in 40 CFR 52.21(b)(23)(i). Due to the District's particular nonattainment classification(s) this results in a notice threshold of 20 tpy for NO_x and ROC; 12 tpy for PM₁₀ and a notice level set at the significance threshold for all other pollutants.

1-25. **Comment YL25:** (C)(7)(c)(ii) - Why not 80% for these pollutants as well? We will need to discuss the type of analyze the District can provide to justify these thresholds before EPA can effectively comment on them. [In reference to threshold limits for PM₁₀ and PM_{2.5}]

Response: Minor Source notice thresholds are justified elsewhere in the staff report.

1-26. **Comment YL26:** (D)(3)(b)(ii) - EPA has been having some issues with what info/data the CAA allows to be withheld. We are checking on this and may have additional comments.

Response: The District, as a public entity in the State of California is subject to the provisions of the California Public Records Act (California Government Code §§6250 et seq.) and is required to comply with all of its provisions in effect when the particular document is

requested. The California Public Record Act also requires that whenever documents are withheld pursuant to its provisions that the nature and reason for such withholding are disclosed. The act provides for judicial review of whether a particular item being withheld is proper pursuant to law. Any person requesting documents regarding the action at any point in the future will have standing to challenge the treatment of any particular information or document as confidential.

1-27. **Comment YL27:** (D)(3)(h) - This needs an “as it exists date” to make it approvable.

Response: The District is required to comply with the provisions of the California Public Records Act (California Government Code §§6250 et seq.) in effect at the time when the particular document is requested. A specific date limitation will only serve to confuse applicants who’s submissions will be subject to the provisions of the act in effect at the time the request is made. The District will be required to release any and all non-exempt documents regarding this particular action within 10 days of request for same regardless of whether or not a specific date limitation is provided in the Rule.

Rule 1600 Comments

1-28. **Comment YL1:** (A)(2)(a) - I deleted this because 52.21 is IBR’d [Incorporated by Reference] in section 3.a, with certain modifications. So every else in the rule, you want to refer to 52.21 as IBR’d in the rule, not make additional IBR’s of 52.21.

Response: All incorporation by reference language has now been moved to subsection (A)(3).

1-29. **Comment YL2:** (A)(3)(a) - If there have been no revisions since July 1 of the year adopted, then EPA suggests citing the July 1 date for ease of future reference.

Response: If rule is adopted prior to July 1, 2016 then this date will read July 1, 2015 unless 40 CFR 52.21 has been amended between July 1, 2015 and the adoption date. If the rule is adopted after July 1, 2016 then the date will read July 1, 2016 unless 40 CFR 52.21 has been amended between that date and the ultimate adoption date.

1-30. **Comment YL3:** (B)(11) - PSD does not require offsets, is this needed here?

Response: Reference to offsets has been removed. Please note however if a PSD permitting action is taken in conjunction with a nonattainment NSR action that requires offsets the resultant merged document will contain an offset package and offset package analysis.

1-31. **Comment BL4:** (C) - Paragraphs (1) and (2) from model rule are in the Procedures rule.

Response: Correct.

1-32. **Comment YL5:** (C)(1) - Only a new or existing PSD major source can request a PAL. A PAL is optional and its purpose is to prevent PSD permit requirements from applying, therefore

such a source does not obtain a PSD permit pursuant to this rule. Instead they modify their existing PSD permit.

Response: Terminology has been adjusted for clarity. If a set of permit conditions (which happen to be PAL like in nature) keep the Facility in question from becoming a Major PSD Facility or Major PSD Modification then a PSD Permit would not be required.

1-33. **Comment:** Potential addition of (C)(4). “The owner/operator of a major stationary source seeking to obtain a PAL permit shall comply with the requirements of 40 CFR 52.21 (aa)(1)-(15).”

Response: Language has been added with the addition of a terminology change of “major stationary source” to “Major PDS Facility” to conform with the remainder of the Rule.

1-34. **Comment YL6:** (D)(2)(a) - Check if this exact same provision is in Rule 1302.

Response: Cross reference to provisions of Rule 1302 ensure that requirements are the same.

1-35. **Comment BL7 and YL8:** (D)(3)(e) – BL7. The one year deadline is a statutory requirement for the PSD program. See CAA Section 165(c). YL8. While it is statutory, the purpose is to give the applicant the opportunity to sue if not done, since an extension is only allowed if both agree, I think this is within the District’s flexibility to allow.

Response: The District has always included a waiver of time period upon the agreement between the applicant and the District due to the potential of delays caused by the necessity to gain other approvals for the project in questions. Common sources of delay include but are not limited to land use issues, other environmental permits, California Energy Commission proceedings, and CEQA suits.

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Karen Nowak

From: Sara Head (SHead@YorkeEngr.com) <SHead@YorkeEngr.com>
Sent: Tuesday, April 12, 2016 7:56 PM
To: Karen Nowak
Subject: RE: Rule Development Input

Karen –

Sorry that I missed your deadline yesterday. When you sent your email (3/9) was my last day at AECOM, so I've been trying to get situated here at Yorke. Plus I am Technical Program Chair for the A&WMA Annual Conference (ACE) in New Orleans in June this year, and March and April are very busy months for us to finalize the technical program (over 100 sessions with >40 panels and 350 papers/posters, a lot to organize). I was only able to look through the materials quickly, and can only provide a few observations.

- You cover it in Rule 1600(D)(i)(b), but you could also include a question in your NSR flow chart regarding whether the facility is a thermal electrical generation facility >50MW, in which case there needs to be coordination with the CEC
- I didn't take the time to track down all of the cross references to the Federal PSD regs, but the impression that one gets looking thru these rules and flow charts is that PSD applicability is only emissions based. I'm sure it's there if I looked at the references, but a facility is also subject to PSD if it has an impact of >1 ug/m3 on a Class I area. Since there are sources close to Joshua Tree, I think it would be good to make it clear somewhere that that this check is needed.
- It appears to me that Rule 1600(D)(3)(e)(v) requires that the draft permit be recirculated if BACT is made less stringent during the comment period? If true, is that necessary? For example, for Palmdale Hybrid Power Project (PHPP) the EPA proposed unachievable PM10 limits based on BACT they determined from other power plants in other states (that was later shown in source tests to be unachievable). I made comments on the draft permit, and EPA revised the limits significantly (still not as much as we requested). EPA circulated a response to comments with the final permit, but they did not re-notice or recirculate the permit or reopen the comment period. The way the rule reads to me, even a tiny change to BACT would require a new comment period, much less a significant change.
- Rule 1302(B)(1)(a)(ii)(v)a.1 made me laugh -- EPA recommends submitting a modeling protocol to save applicants money. For PHPP, we submitted a modeling protocol to EPA that they never commented on. 2 years later after the new 1-hr NO2 NAAQS was promulgated, Region 9 sent the draft permit to OAQPS for sign-off, and OAQPS wanted us to redo all of the modeling analyses because we'd only used 3 years of met (which we had clearly proposed in the protocol) and not 5. They agreed that met data from the Palmdale Regional airport could be considered on-site (in which case 1 yr could have been enough), but said that even with on-site data, that if more than 1 year is available, up to 5 years of available data must be used. Also, it was clear that 5 years would not change the result. At any rate, Scott Bohning issued the permit without requiring the re-do. (I'm not suggesting a change here, I just had to mention it).
- Rule 1302(B)(1)(a)(ii)(v)a. – page 1302-3 these sections refer to the 1990 Draft NSR Manual **pages 4 thru 5**, but I looked at the puzzle book and this is just the introduction. Was it intended to go back later and put in the correct page references? Also please note that you have two part "3" in the list.
- In this list of requirements, isn't item iii.a the same as iv.a.5? (a visibility analysis for Class I areas within 100 km)? Why the duplication?
- I may have missed it, but don't you also need to mention a growth analysis in this list?
- Furthermore, although not explicitly listed in the federal PSD regulation, EPA Region 9 always requires an Endangered Species Act analysis (as well as a cultural Section 106 analysis, although they have not been as thorough about that. These are both listed on an ancient complete application list that EPA was still using the last time I did a PSD permit (PHPP in 2010). I thought that Region 9 had also been insistent in PSD delegation

agreements that an ESA analysis be done. Should that be mentioned in the rule or at least in the Staff report? If EPA did not mention this in their comments, then it could be skipped, but that would surprise me.

- Both Victorville 2 and PHPP used the PSD permit as the nexus for ESA Section 7 consultation, to avoid ESA Section 10 consultation which takes years longer. Is that nexus only available if EPA issues the PSD, or would that also work if issued by MDAQMD? If not, that was the only advantage of getting a PSD through EPA.

Thanks for giving me the opportunity to provide input. I'm curious if you heard from many others in your distribution on this email which is a who's-who in permitting. If any of the others did a reply all, I wouldn't get it since your email used my AECOM email address. I look forward to MDAQMD getting delegation of this program (and hopefully I will get some more PSD projects!)

Sara

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From: Head, Sara [<mailto:Sara.Head@aecom.com>]

Sent: Wednesday, March 9, 2016 2:58 PM

To: Sara Head (SHead@YorkeEngr.com) <shead@yorkeengr.com>

Subject: FW: Rule Development Input

From: Karen Nowak [<mailto:k2nowak@mdaqmd.ca.gov>]

Sent: Wednesday, March 09, 2016 1:46 PM

To: Moussavian, Lida; 'Angela.Harrell@elementis.com'; 'brenda.abernathy@navy.mil'; 'CLMorrow@semprautilities.com'; 'cykaufman@mw2h2o.com'; 'dmcgivney@semprautilities.com'; 'David Rib'; 'drtdguth@aol.com'; 'elizabeth.rehoreg@ch2m.com'; 'erin.adams@usmc.mil'; 'fgobler@nwpipes.com'; 'Glen_King@fpl.com'; 'JBoyer@TENASKA.com'; 'JCASSMASSI@aqmd.gov'; 'john.parks@mineralstech.com'; 'Judy_Rocchio@nps.gov'; 'LWallace@semprautilities.com'; 'marci.stepman@verdant-env.com'; Burns, Mark A CIV (US); 'may@svminerals.com'; 'MCHale@semprautilities.com'; 'mcadle@glaze-n-seal.com'; 'muhammad.bari@irwin.army.mil'; 'Noel Muyco (nmuyco@semprautilities.com)'; 'PHarvey@reliant.com'; 'sbfarmbureau@msn.com'; 'bradley.dickinson@us.af.mil'; 'shonan@molycorp.com'; 'terryk@charlesmcmurray.com'; 'Tonnies_Cummings@nps.gov'; Head, Sara; 'Michael.Darmody@altagas.ca'; 'jkessler@energy.state.ca.us'; dhaggard@calportland.com; 'Michael Taylor'; 'Glen_King@fpl.com'; Mark Solheid (Mark.J.Solheid@jpl.nasa.gov); 'Williams, Diana M.'; 'Larry.Ashby@Mineralstech.com'; 'amcqueen@yorkeengr.com'; 'Darlene Marie Bray'; 'jerry.salamy@CH2M.com'; 'Tom W. Andrews (TAndrews@sierraresearch.com)'; 'Gary Rubenstein'; 'kchristensen@ducaero.com'; 'jlester@environcorp.com'

Cc: Tracy Walters

Subject: Rule Development Input

The MDAQMD is developing a set of regulatory changes designed to allow the U.S. Environmental Protection Agency (USEPA) to delegate the authority to issue Prevention of Significant Deterioration permits to the district. At the same

**Responses to Comment of S. Head, Yorke Engineering, LLC dated 4/19/2016
(Commenter #2)**

Comments have been paraphrased.

2-1. **Comment:** Could you include a question in your NSR flow chart regarding whether the facility is a thermal electrical generation facility >50MW requiring coordination with CEC?

Response: The NSR flow charts are intended as guidance and will not be adopted as part of the rule(s), however, a question regarding electrical generation facilities will be added.

2-2. **Comment:** A facility is also subject to PSD if it has an impact of >1 ug/m³ on a Class I area. Since there are sources close to Joshua Tree this should be clarified.

Response: This requirement is adopted by reference in Rule 1600. A note will be included in the flow chart guidance to ensure that it is not inadvertently omitted.

2-3 **Comment:** Does Rule 1600(D)(3)(e)(v) requires that the draft permit be recirculated if BACT is made less stringent during the comment period?

Response: Recirculation is triggered pursuant to USEPA requirements. Generally BACT is agreed upon by all agencies involved prior to issuance of the preliminary determination.

2-4 **Comment:** Modeling protocol submissions do not save applicant's money.

Response: Comment noted.

2-5 **Comment:** Rule 1302(B)(1)(a)(ii)(v)a. refer to the 1990 Draft NSR Manual pages 4 thru 5 but these are just overviews.

Response: Parenthetical citation to the 1990 Draft NSR Manual has been augmented.

2-6 **Comment:** Please note that you have two part "3" in the list.

Response: Outline formatting has been corrected.

2-7 **Comment:** Isn't item iii.a the same as iv.a.5? (a visibility analysis for Class I areas within 100 km)? Why the duplication?

Response: 1302(B)(1)(a)(iii) is the same as (B)(1)(a)(iv)a.5. but not all Facilities or sources will be subject to both requirements. The duplication will ensure that all applicable sources will be subject to this provision.

2-8 **Comment:** Don't you also need to mention a growth analysis, an Endangered Species Act analysis, and cultural Section 106 analysis?

Response: This analysis may be required under the "other information" requirements scattered throughout Rule 1302. In addition, most all new or modified facilities will undergo review pursuant to the California Environmental Quality Act (CEQA) at some point during the development process. At the earliest such review would occur during the land use approval process and at the latest during the air permitting process. Facilities which are large enough to require growth analysis, Endangered Species Act analysis and Section 106 analysis will most likely have these satisfied by the appropriate CEQA documentation.

2-9 **Comment:** Will the PSD permit be able to be used as the nexus for ESA [Endangered Species Act] Section 7 consultation to avoid ESA Section 10 consultation?

Response: It is unknown specifically at this time whether this coordination between the Endangered Species Act and the PSD permit will be possible. However, since EPA will be delegating the entire program and the District will be required to use EPA's protocols and guidance we suspect that this may indeed be able to be used in the same manner as presently.

June 6, 2016



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Memo to: Karen Nowak, MDAQMD

From: Gary Rubenstein

Subject: PSD/NSR Rule Development Input

Thank you for the opportunity to provide comments and suggested changes to the District's proposed amendments to the existing New Source Review (NSR) regulation and proposed new Prevention of Significant Deterioration (PSD) rule (Regulation XIII and Rule 1600, respectively). Although our suggested changes are mostly editorial in nature, there are several more substantive changes that we are proposing. Our changes are shown in blue on the attached version of the proposed rule changes, and our specific comments are discussed in detail below.

Rule 1600

Rule 1600, Section (D)(3)(d)(i) (Permit Issuance Procedure: Public Hearing) requires the APCO to hold a public hearing if any person requests one. We are concerned that this provision may be overly permissive and could allow project opponents to request a public hearing simply for the sake of delaying a project. The requirement for a public hearing stems from 40 CFR 124.12(a)(1): "The Director shall hold a public hearing whenever he or she finds, on the basis of requests, *a significant degree of public interest* in a draft permit..." [emphasis added]

EPA has taken considerable pains to retain its discretion to determine whether a public hearing is appropriate. In *In re Sierra Pacific Industries*, (16 EAD ___, July 18, 2013), the EPA Environmental Appeals Board (EAB) described in some detail the multifactor analysis that would support denial of a hearing request based on a determination that requests did not constitute "a significant degree of public interest." We suggest the following revisions to this section to give the APCO the discretion to determine whether there is significant public interest in the draft permit to warrant a public hearing:

If ~~a~~Any person ~~may~~ requests a public hearing pursuant to the provisions of District Rule 1302(D)(3)(d). If the APCO finds, on the basis of requests, a significant degree of public interest in the draft permit, the APCO shall hold a public hearing and notify the appropriate agencies and the general public using the procedures set forth in District Rule 1302(D)(3)(a). [Derived from 40 CFR 51.166(q)(2)(v) and 40 CFR 124.12(a). See also *In re Sierra Pacific Industries*, 16 EAD ___, July 18, 2013]

Rule 1302

Rule 1302, Various Sections: Several of the applicability sections are meant to apply to projects that trigger PSD. However, the phrase that is used in the proposed Rule is “the Facility or Modification is or is not a Federal Major Facility or a Federal Major Modification.” This could be interpreted to mean that the requirement is applicable to any project occurring at a Federal Major Facility. We believe that the intent is to apply the requirement to any project that results in a new Federal Major Facility or a Federal Major Modification.

Rule 1302, Section B.1.a.v (Prevention of Significant Deterioration Analysis) would require submittal of an approved modeling protocol before an application for a project subject to PSD review could be determined to be complete. The language currently proposed would require the modeling protocol to be approved by the APCO, EPA, and, if applicable, the Federal Land Manager(s) (FLM) of any potentially impacted area. While we understand and agree with the importance of consulting with EPA and the affected FLM(s) prior to undertaking an ambient air quality analysis for a project that is subject to PSD review, in our experience it is extremely difficult and time-consuming, if not impossible, to obtain formal EPA approval for a modeling protocol. In addition, the FLMs are responsible for reviewing and commenting on air quality-related values only in the areas for which they are responsible, and should not be responsible for approving all aspects of a modeling protocol. We suggest the following alternative language:

1. A modeling protocol approved by the APCO, ~~USEPA and, if applicable, the Federal Land Manager(s) of any potentially impacted area that is consistent with the requirements contained in the most recent edition of USEPA’s “Guideline on Air Quality Models.” An applicant is encouraged to consult with the USEPA and if applicable, the Federal Land Manager(s) of any potentially impacted area, in preparing the protocol. If the APCO determines that the USEPA guideline model is inappropriate for use, the APCO may designate an alternative model only after allowing for public comments and only with the concurrence of the CARB or the USEPA; and...~~

Rule 1302 (C)(3)(b)(iii) would require California Air Resources Board (CARB) and USEPA approval of the offset package before the offsets could be used. As discussed above, we have found it very difficult and time-consuming to obtain formal USEPA approval for submittals. Rather than requiring CARB or EPA approval, we suggest that these agencies be provided with an opportunity to object, with the result that the permit process goes forward if those agencies fail to act:

- (iii) After determining that the Offsets are real, enforceable, surplus, permanent and quantifiable and after any permit modifications required pursuant to District Rule 1305 or Regulation XIV have been made, the APCO shall approve the use of the Offsets.
 - a. For a Federal Major Facility as defined in District Rule 1310(C)(6) or Federal Major Modification as defined in District Rule 1310 (C)(7) and which is located in a Federal nonattainment area, the APCO’s ~~approval~~

~~shall be subject to the approval of CARB and USEPA during the comment period required pursuant to subsection (D)(2) below shall not approve the proposed Offset Package if EPA or CARB objects to the portion of the Offset Package that provides offsets for nonattainment pollutants and their precursors during the comment period.~~

b. For all other Facilities or Modifications subject to this provision the APCOs approval shall be subject to the approval of CARB shall not approve the proposed Offset Package if CARB objects to the Offset Package during the comment period required pursuant to subsection (D)(2) below.

Rule 1302, Section D.3.d (Permit Issuance Procedure, Public Review and Comment) sets forth a requirement to hold a public hearing. Please see the discussion above under Rule 1600. We suggest the following change to this section:

(d) If the APCO finds, on the basis of requests, a significant degree of public interest in the draft permit, ~~The~~ APCO shall, if requested pursuant to the provisions provided for in the published notice, hold a public hearing regarding the proposed preliminary determination.

NSR Flow Chart

We believe that there are some minor errors in the NSR flowchart, as outlined below.

1. There is a step missing in the BACT evaluation stage (between Item 7 and Item 8). Rule 1303(A)(3) requires BACT for any new unit at a facility with emissions > 25 TPY.
2. The offsets analysis appears to take the evaluator through unnecessary steps. We recommend including a citation to the applicability requirement that is triggered by each answer; this will help with interpreting the flowchart.
 - a. If the answer to Item 8 is "yes," offsets are required by 1303(B)(1); skip Items 9 and 10 and go straight to Item 11 to determine whether the exception in 1303(C) applies.
 - b. If the answer to Item 8 is "no," continue to Item 9.
 - c. If the answer to Item 9 is "yes," offsets are required by 1303(B)(2); skip Item 10, and go straight to Item 11 to determine whether the exception in 1303(C) applies.
 - d. If the answer to Item 9 is "no," continue to Item 10 and determine whether netting (SERS) was used, and if so evaluate whether it affected the offset analysis.
 - e. If the changes suggested above are made, then a "no" answer to Item 10 will mean that offsets weren't triggered, and the analyst should skip Item 11 and proceed to Item 12.

Toxics Flow Chart

We believe that the contemporaneous risk reduction analysis is in the wrong place in the sequence. It should occur before the Cancer Burden, Significant Risk, and Significant Health Risk values are determined.

Also, cancer burden is a dimensionless number, not a risk. The District's threshold for unacceptable burden is 0.5, not 1 (or 1 in a million).

Again, we appreciate the opportunity to comment. If you have any questions or wish to discuss our comments further, please do not hesitate to call.

Attachment

Responses to comments of G. Rubenstein dated June 6, 2016 (Commenter #3)

Appendices have been omitted from the comment memo for brevity of the staff report. Copies of the appendices are available upon request and will be included in the Rule Archive.

3-1 Comment: Rule 1600(D)(3)(d)(i) – We are concerned that this provision may be overly permissive and could allow project opponents to request a public hearing simply for the sake of delaying a project.

Response: 40 CFR 51.166(q)(2)(v) is silent on the degree of discretion provided to the APCO as to whether to schedule a public hearing. While it is true that 40 CFR 124.12(a)(1) does allow discretion for the APCO to determine if there is a “significant degree of public interest” and only hold a hearing when the issues rise to that level, 40 CFR 70.7(h) and (h)(4) have previously been interpreted by USEPA Region IX to require a public hearing to be held whenever a request is received (See language mandated by USEPA in District Rule 1207(A)(1)(d)). District requested clarification from USEPA and was informed that 42 U.S.C. §7475(a)(2) (FCAA §165(a)(2)) specifically requires the opportunity for a hearing on the air quality impact of the New or Modified Facility, alternatives to the Facility, control technology requirements and other appropriate considerations. They also noted that recently EPA’s environmental appeals board has remanded cases where USEPA denied a public hearing based upon the “significant degree of public interest” rational (see: [https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/PSD%20Permit%20Appeals%20\(CAA\)/1432397D2DE2B8F885257BAC005D9283/\\$File/Remanding%20In%20part%20and%20Denying%20Review%20in%20Part....pdf](https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/PSD%20Permit%20Appeals%20(CAA)/1432397D2DE2B8F885257BAC005D9283/$File/Remanding%20In%20part%20and%20Denying%20Review%20in%20Part....pdf)). Given this USEPA has indicated that the bar for a hearing is now low enough such that practically any request will mandate that such hearing occur.

The public hearing requirement is not expected to cause undue delay of the issuance of a permit. A 30 day notice is required (see Proposed 1302(D)(3)(a)(i)). Since a hearing is requested by commentators and is held before the APCO (as the permit issuing body) or his/her designee the District expects that the permit issuance will already be slightly delayed due to the necessity to respond to comments received. Once the hearing is held any comments would need to be incorporated into the responses to comments and if substantive changes are made to the permit as a result the entire thing would need to be re-noticed. The District expects such substantive changes in response to comments to be the exception rather than the rule.

3-2 Comment: Various Sections Rule 1302 – Several of the applicability sections are meant to apply to projects that trigger PSD. However the phrase that is use in the proposed Rule is “the Facility or Modification is or is not [sic] a Federal Major Facility or a Federal Major Modification. This could be interpreted to mean that the requirement is applicable to any project occurring at a Federal Major Facility.

Response: Rule 1302 is primarily the verbal representation of a checklist or flow chart. The substantive requirements are contained elsewhere in the regulations, either specifically or adopted by reference, and thus would control if a particular requirement such as PSD is applicable. All permit activity would need to at least determine if a particular requirement is

applicable using the applicability rules for that specific requirement. In the case of PSD a project at a Federal Major Facility, just like any other project, would need to determine if PSD applied or not. If it wasn't a New Federal Major Facility or a Federal Major Modification then PSD clearly wouldn't apply and the project would go on to the next step with no further analysis needed.

3-3 Comment: Rule 1302(B)(1)(a)(v) – While we understand and agree with the importance of consulting with EPA and the affected FLM(s) prior to undertaking an ambient air quality analysis for a project that is subject to PSD review in our experience it is extremely difficult and time-consuming, if not impossible to obtain formal EPA approval for a modeling protocol.

Response: Given the expressed difficulties in obtaining approval of such protocols prior to the issuance of the preliminary determination the District will revise this section to require APCO approval, notification of EPA and FLM(s), and consistency with the most recent USEPA modeling guidance. The District feels that such notification as well as the public comment/other agency review process will provide adequate time for EPA and/or the FLM(s) to object to modeling protocol if necessary. Language encouraging consultation is inappropriate for direct inclusion in the rule however it will be encouraged during the application and analysis process.

3-4 Comment: Rule 1302(C)(3)(b)(iii) – Would require California Air Resources Board and USEPA approval of the offset package before the offsets could be used. As discussed above, we have found it very difficult and time-consuming to obtain formal USEPA approval for submittals.

Response: Please note that the language cited is currently in District Rule 1302(C)(5)(b)(iii). Since such language was already in the District's New Source Review rule prior to December 30, 2002 it is subject to the provisions of the "Protect California Air Act of 2003" (Health & Safety Code §§42500 et seq.). Health and Safety Code 42504 in effect prohibits any change to New Source Review provisions which are less stringent than those currently in effect as of December 30, 2002 without substantive findings.

The current language has worked well and the District does not expect this to change as a result of the proposed amendments which merely move this requirement to another section of the rule.

3-5 Comment: Rule 1302(D)(3)(d) – Sets forth a requirement to hold a public hearing. Please see the discussion above under Rule 1600.

Response: See response to comment 3-1.

3-6 Comment: Minor errors in the flowcharts.

Response: Please note that the flow charts are included for informative guidance and are NOT a part of the rule(s). Legally the rules, not the flow charts, will control. As mentioned in responses to prior comments the District will revise and adjust the flowcharts to include necessary changes. The District fully expects these flowcharts to undergo modification for clarity and ease of use over time.

Responses to USEPA Comments of 6/14/16 (Commenter #1)

Please Note: USEPA's Comments of 6/14/16 were provided in comments inserted into the Staff Report (SR1 Reg XIII R1600 dated 5/12/16). Comments have been copied and section references have been provided to consolidate space in the Staff Report. A copy of the full document including commentary is available upon request and will be included in the Rule Archive Document. In addition, comments are identified sequentially by Commenter See USEPA Comments of 3/31/16 for comments 1-1 to 1-35.

Staff Report Comments

1-36. **Comment YL1:** Section II - Really this is 51.160-165. 51.166 is for PSD.

Response: Comment noted. Executive Summary was revised subsequent to the 5/12/16 version and this citation no longer appears.

1-37. **Comment YL2:** Section II (in reference to a citation) - The requirements for a PSD that a state must adopt are in 51.166. 52.21 is EPA's FIP of 51.166 for any State that has not adopted a program to comply with 51.166.

Response: Comment noted. Executive Summary was revised subsequent to the 5/12/16 version and this citation no longer appears in this section. Please note that since USEPA has required insertion of various provisions contained in 40 CFR 52.21 which are not echoed in 40 CFR 51.166 citation to the section in which the particular provision occurs have been provided for explanatory purposes.

1-38. **Comment YL3:** Section II (in reference to a citation) - The CAA requires District's to adopt a PSD program, if not, then EPA implements 52.21 as a FIP. This has been the case for Mojave. Considered revising to say EPA requesting that Districts' adopt their own rules and become the permit authority for PSD actions, and have a single permit issued for both NA NSR and PSD, rather than a source obtaining two permits, one from EPA and one from the District. When Rule 1600 is SIP approved, the District will be the PSD permit authority, there is no need for a delegation agreement.

Response: Comment noted. While the clarification is appreciated this is not an appropriate discussion to be included this section.

1-39. **Comment YL4:** Section II (in reference to Enhanced NSR designation) – It is not really a “designation”. Your rules must contain certain provisions (NSR and Title V) to allow the enhanced NSR process to be used. In my rule comments, I asked where you have provided any of these provisions regarding enhanced NSR.

Response: Comment noted. Executive Summary was revised subsequent to the 5/12/16 version and this terminology was revised. See also response to comment 1-63.

1-40. **Comment YL5:** Section III - Are you really amending the entire Reg, or just two rules?

Response: Comment noted. Staff Recommendation was revised subsequent to the 5/12/16 version and a notation regarding the specific rules to be amended was added.

1-41. **Comment YL6:** Section VI. A. 1. Table 1 - Not sure why in your table if it can't occur? We say that you can only have a major mod and a major source.

Response: This notation was included in a similar table created for a previous amendment as a result of a specific USEPA comment regarding the interrelationship between the MDAQMD's Major Facility threshold (Rule 1303(B)) and the term "Significant" (Rule 1301(DDD)). It has been retained here to avoid a repetition of the prior comment.

1-42. **Comment YL7:** Section VI. A. 1. Table 1 - I haven't looked at the rule requirements, but for Major facilities there should be two modification categories, 1) major source with a major mod, which is the emission increases shown. 2) major source with a minor mod, which is an increase below the levels shown.

Response: A "Major Facility" by definition (Rule 1301(DD)) has *existing emissions* > 25 tpy of NO_x or VOC or 15 tpy of PM₁₀, therefore *any* modification that does not decrease emissions below the Major Facility threshold will require BACT (for all new equipment per 1303(A)(3); modified equipment emitting >25 lbs/day per 1303(A)(2)) and offsets for *any emissions increase* regardless of whether the increase is the result of a major modification or a minor modification.

1-43. **Comment YL8:** Section VI. A. 3. a. - Actually, 169 is missing the last entry in 51.166(b)(1)(iii)(aa), so better to cite to 51.166(b)(1)(ii)[sic].

Response: Comment noted. Additional citation to 40 CFR 51.166(b)(1)(iii) and 40 CFR 52.21(b)(1)(iii) has been added in a footnote.

1-44. **Comment LY9:** Section VI. D. - Need to say something about how this is small enough that it is not expected to affect the District's ability to attain or maintain the NAAQS and why.

Response: Additional language has been provided to clarify that the emissions from Facilities and emissions units receiving minimal notice will not affect the MDAQMD's ability to attain or maintain the NAAQS.

1-45. **Comment LY10:** Section VI. E. - Section 193 says that in NA areas you cannot relax control requirements. A court has ruled that NSR program is a control requirement. In this case, you are not changing any NSR standard, so you just need to state this fact and therefore you comply with Section 193.

Response: Citation and analysis to state compliance with FCAA §193 (42 U.S.C. §7515) has been added.

1-46. **Comment YL11:** Section VI. F - I did not review this portion.

Response: Comment noted.

Rule 1600 Comments

1-47. **Comment YL12:** 1600(B)(1)(b) - Check for consistent capitalization of this term throughout the Rule or rule.

Response: Historically specific rule references have been noted by capitalization (Rule 201, Rule 1207 etc.) while generalized references have been capitalized depending upon context. Capitalization will be standardized throughout.

1-48. **Comment YL13:** 1600(B)(3) - I assume all of the cited rules are SIP approved? If any are not, we need to examine to determine if it causes a SIP approval issue.

Response: MDAQMD Rules 201 and 202 are SIP approved at 40 CFR 52.220(c)(39)(ii)(B) for the San Bernardino County portion of the MDAQMD and at 40 CFR 52.220(c)(39)(iv)(B) for the Blythe/Palo Verde Valley portion of the MDAQMD within Riverside County (43 FR 52237, 11/9/1978). The MDAQMD SIP table located on the MDAQMD website at <http://www.mdaqmd.ca.gov/Modules/ShowDocument.aspx?documentid=45> provides a list of all SIP and other rule actions applicable to the MDAQMD.

1-49. **Comment YL14:** 1600(D)(2)(i) - Above used the phrase “as incorporated in this rule by reference” Either is fine, but suggest consistent usage. Personally, I prefer “as incorporated by reference herein”.

Response: Historically the MDAQMD has used “incorporated by reference herein” for the direct incorporation language in the text (see Rule 1113(G)(5)). If the incorporation occurs parenthetically then the language used is “Incorporated herein by this reference” (See Rule 1210). If the language is only a reference to the incorporation not the incorporation itself then the language used is “as incorporated by reference” or “as incorporated by reference in this Rule.” Rule language has been checked and modified as necessary.

1-50. **Comment YL15:** 1600(D)(3)(a)(i) – For?

Response: Pursuant to MDAQMD permit nomenclature, permits are always issued “to” Facilities not “for” Facilities since the permits are paid for by and are technically assets belonging to the Facility.

1-51. **Comment YL16:** 1600(D)(3)(b)(i) - What if EPA was not notified? Then no public notice for PSD? That won’t work. EPA must receive public notice for all PSD permits. Maybe move EPA review down to section (c) and make (b) only FLM?

Response: Comment Noted. This provision is a redundancy designed to insure that USEPA and the FLM receive notices as early as possible. Proposed amended Rule 1302(B)(2)(c) requires sending an application to USEPA/FLM if there is a potential visibility impact on a Mandated Class I Federal Area (as defined in 40 CFR 51.301). Similarly proposed amended Rule 1302(B)(2)(a)(ii) requires sending the completeness determination and application for any application subject to the provisions of Rule 1600. If Rule 1600 is NOT applicable then USEPA would be required to be noticed regarding offsets (See proposed amended Rule 1302(C)(3)(b)(iii)a.) at the earliest and at the latest upon issuance of the Preliminary Decision (See proposed amended Rule 1302(D)(2)). If, for some reason Rule 1600 did not apply initially and became applicable later OR if for some other reason USEPA and/or the FLM did not receive notice of the application or completeness determination then this provision as well as 1302(D)(2) would require the notice to be given at the time of the issuance of the preliminary decision.

Please note: due to a change in outline organization the provision formerly in 1302(B)(2)(d) has been shifted into (B)(2)(a)(ii) and a change in this cross reference has been made.

Rule 1300 Comments

1-52. **Comment YL17:** 1300(B)(1) - Not sure I appreciated this before, but this statement is made in a specific rule, not a regulation. I think this needs to say “Regulation XIII” instead. Same comment on all use below.

Response: Comment noted. The MDAQMD Rule book is organized by regulation with each regulation indicated by a Roman numeral. All Rules in a specific regulation are predicated with an ordinal number that corresponds to the Roman numeral regulation designation. Thus, all rules in Regulation XI will be numbered 11xx (1113, 1114 etc.) Likewise, all rules contained in Regulation XIII will bear the number 13xx (1300, 1302, 1320). A reference to “this Regulation” in a particular rule will therefore be a specific reference to the regulation to which the rule number refers. A citation to the specific Roman numeral of regulation in which the rule happens to occur is therefore unnecessary. If, however, the reference is to a different series of rules (Regulation XII – Federal Operating Permits for example) then the proper referent terminology is “Regulation XII”. If the cross citation is to a specific provision of a specific Rule in another regulation then the proper referent terminology is “Rule [rule number](specific citation)”.

1-53. **Comment YL18:** 1300(C)(1) - Should this be Reg. XIII and Rule 1600?

Response: Comment noted. Technically the Regulation XIII applicability is driven by Rule 1300 therefore if Rule 1300 does not apply the entire regulation does not apply. Rule 1600 likewise has its own applicability section which is based upon new or changed emissions or potential to emit. Therefore, using the term “rule” in the exemption is appropriate; however this provision has been modified as suggested for clarity.

1-54. **Comment YL19:** 1300(D)(2)(a) - For clarity, consider deleting, since it is the SIP rule that will now apply.

Response: A reference to Rule 1600 has been added. FCAA PSD requirements (42 USC §§7470-7492) will continue to apply until the program has been approved by the approval of new Rule 1600 into the SIP. At that point we will consider removing the FCAA reference.

Rule 1302 Comments

1-55. **Comment YL20:** 1302(B)(2)(c) - Right now this is limited to visibility, but the provision must provide the same documents if (B)(1)(a)(v)a.6 (100 km) is triggered. Please revise as needed.

Response: Previous comments by USEPA indicated that the visibility and other impacts superseded the 100km trigger and USEPA requested the removal of such a trigger for submission of application to USEPA and any applicable Federal Land Manager. The within 100km (62.137 miles) trigger for submission of application to the appropriate entities has been restored to 1302(B)(1)(a)(iii). See also Response to Comment 1-67.

1-56. **Comment YL21:** 1302(C)(2)(a) - Only R1303 is listed, why make this plural?

Response: Typographical error has been corrected.

1-57. **Comment YL22:** 1302(C)(3)(b)(iv) - NSR?

Response: “New Source Review Document” is a separate term defined in Rule 1301(DD). Usage has been checked throughout and changed if necessary.

1-58. **Comment YL23:** 1302(C)(3)(b)(iv) - Can you specify ATC?

Response: ATC permits are issued for new equipment or Facilities. Often modifications to existing equipment are incorporated directly into the existing PTO permits. Therefore the terminology “any permits” is appropriate.

1-59. **Comment YL24:** 1302(C)(4)(a) - Citation needs to be updated. I think this is (ii)a.3.?

Response: Cross reference has been corrected.

1-60. **Comment YL25:** 1302(C)(4)(a)(ii) - A thought here: instead of “any of the provisions...apply” should this be more specific and state if determined to be “a Major source or Major mod” This is how (B)(1)(a)(ii)a.4 describes a Rule 1310 determination.

Response: The language in (B)(1)(a)(ii)a.4. is not a description of a Rule 1310 applicability determination. Instead that provision is an exclusion from the requirements of (B)(1)(a)(ii) if the particular facility is NOT subject to Rule 1310 using the definitions found in that Rule. Since it is a reference to a particular part of Rule 1310 not to the rule requirements itself the language is appropriately specific. The reference in 1302(C)(4)(a)(ii) is to the entire Rule 1310 not just two definitions contained therein. Thus, the non-specific reference is appropriate.

1-61. **Comment YL26:** 1302(C)(7)(a) - Word used in 7(c).

Response: The phrase “of the following provisions” is intended to refer to those provisions immediately below the indicated paragraph in the outline format, namely 1302(C)(7)(a)(i-iv). Minor rewording of this provision subsequent to the reviewed draft has removed this phrase.

1-62. **Comment YL27:** 1302(C)(7)(a)(i) - You define permit unit in Rule 1600, but not in Reg. 13, I think this should be emission unit?

Response: Please see Rule 1301(SS) for the definition of “Permit Unit” applicable to Regulation XIII. Regulation XII applies at the Facility level while Regulation XIII primarily works with those emissions units which are not exempt pursuant to District Rule 219, aka “permit units.” This specific provision is the full notice trigger level and only kicks in if there is a change to a non-deminimis emissions unit, aka “permit unit,” at a Title V facility, offsets are needed, it’s a 1310 facility or PSD is applicable. Therefore “permit unit” is indeed the proper term.

1-63. **Comment YL28:** 1302(C)(7)(a)(i) bracketed notation regarding “Enhanced NSR”- Requires 45 day EPA review. Working on another project that involves “enhanced NSR”. Where are your provisions for this process? Just want to make sure they don’t have a problem I am dealing with now.

Response: Provision referencing “Enhanced NSR” including the 45 day review period has been added as 1302(D)(1)(d). The District will consider adding cross references to this provision into appropriate subsections of District Rules 1203 and 1207 for clarity in a separate action sometime in the future. Per USEPA subsequent suggestion cross references to 40 CFR 70.6(a-g), 70.7(a-b) and 70.8 have been added.

1-64. **Comment YL29:** 1302(C)(7)(c)(ii)b. -This rule is not in the SIP, you must cite a SIP approved rule or Part 70.

Response: District Rule 1201 was approved as part of the MDAQMD’s Title V program at 40 CFR 70, Appendix A, California, (q) (66 FR 63503, 12/17/01). USEPA has historically insisted that this approval renders these rules “federally enforceable” and thus they are considered “SIP equivalent” for purposes of citation and enforcement. If this is no longer the case please inform the District immediately as a variety of District Rules will need to be SIP submitted and acted upon by USEPA in an expeditious manner.

1-65. **Comment YL30:** 1302(C)(7)(c) bracketed notation regarding minor NSR notice levels - Your staff report must include a justification for these thresholds. I haven’t reviewed the rest of the SR to see if one has been provided.

Response: Justification for setting levels of minor source noticing is contained in staff report section VI. A. 4.

1-66. **Comment YL31:** 1302(D)(1)(c) - I think this is the only place I've seen the word Draft used? I think other places you call it preliminary.

Response: Draft is the appropriate term in this situation since the Preliminary Determination is in merely a statement as to whether the NSR Document should be approved, denied or conditionally approved. The NSR Document itself, like the PSD Document as defined in proposed new Rule 1600(B)(11), consists of the application, the engineering evaluation (including all relevant analysis), and the proposed conditions usually in the form of a draft ATC or PTO. Please see a similar provision regarding the Draft PSD Document in proposed new Rule 1600(D)(3)(a).

1-67. **Comment YL32:** 1302(D)(2)(d) - Here I might just call it a "Class I area" since it applies to both the visibility and any other impacts from the 100 km analysis.

Response: Change in terminology to "Mandatory Class I area" was at your prior request per comment 1-14. Please also see response to comment 1-55.

1-68. **Comment YL33:** 1302(D)(2)(d) - If within 100 KM, must provide notice to FLM as well.

Response: Cross reference added. Please also see response to comment 1-55.

1-69. **Comment YL34:** 1302(D)(4)(b) - NSR? Check for consistent use?

Response: See response to comment 1-57.

1-70. **Comment YL35:** 1302(D)(5)(a)(iv) - Unless this is your SIP approved rule, such credits must be federally enforceable through the ATC, but must only be surrendered prior to emitting any pollutants, ie startup.

Response: Language has been revised to mirror language currently in 1302(D)(5)(b)(ii) and proposed 1302(C)(3)(v) and (vi).

1-71. **Comment YL36:** 1302(D)(5)(b)(iv) - This is the test for a PSD source, demonstrated using modeling, which is already covered by Rule 1600. This language, in (iii) & (iv) is to satisfy the language in 51.160(b).

Response: Language modified. Cross references added in *[bracketed italicized notations]* elsewhere to ensure that the applicable NSR requirements are not relaxed in violation of Health & Safety Code §§42500 et seq.

1-72. **Comment YL37:** 1302(D)(6)(a)(iii) - This already had to be done for the ATC, so does it need to be listed here for the PTO as well? OK, if you want to keep, just wondering. Same with next paragraph, offsets are verified at time of ATC issuance.

Response: Once again ATC permits are issued to new equipment or Facilities. Certain types of modifications are effectuated directly on previously existing PTO permits. Thus, including this provision here ensures that this step is not inadvertently omitted. See also response to comment 1-58.



Matthew Rodriguez
Secretary for
Environmental Protection

Air Resources Board

Mary D. Nichols, Chair
1001 I Street • P.O. Box 2815
Sacramento, California 95812 • www.arb.ca.gov



Edmund G. Brown Jr.
Governor

July 6, 2016

Karen Nowak
District Counsel
Mojave Desert Air Quality Management District
14306 Park Avenue
Victorville, California 92392

Re: Proposed Amendments to Mojave Desert New Source Review and Prevention of Significant Deterioration Rule 1302, Procedure

Dear Ms. Nowak:

Thank you for discussing with us on June 14, 2016, the Mojave Desert Air Quality Management District's proposed amendments to its New Source Review and Prevention of Significant Deterioration rules. We provide these comments to ensure the District's rules meet the requirements of the Air Resources Act¹ and the federal Clean Air Act, and thus are approvable by the Air Resources Board.

In Rule 1302, section (C)(5)(b)(ii) and (v), the existing text must be retained: "The Offsets must be obtained prior to the commencement of construction on the new or Modified Facility" and must be "created by a shutdown of Emissions Unit(s) which was not contemporaneous with the creation of the Offsets." Compared to the proposed changes, the existing provisions are more restrictive of what is an eligible offset. They ensure offsets are obtained from reductions that would not have occurred anyway, and thus are more protective of air quality.

The proposed changes relax the stringency of the rule by extending the deadline by which offsets must be in place and the requirements for when they are created. See proposed amendments in section (C)(3)(b)(ii) and (vi).

Retaining the existing text will ensure that the proposed changes are not inadvertently interpreted in conflict with the Protect California Air Act of 2003² that precludes relaxing rules, like this one that are in the State Implementation Plan: "The Offsets must be

¹ Health & Saf. Code, div. 26, § 39000 et seq.

² Health & Saf. Code, pt. 4, ch. 4.5, § 42500, et seq.

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.

California Environmental Protection Agency

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Ms. Karen Nowak
July 6, 2016
Page 2

obtained prior to the commencement of construction on the new or Modified Facility."
(Rule 1302 (C)(5)(b)(v).)

The District's rule must continue to refer to commencement of construction and require that offsets be obtained from shutdowns that are not contemporaneous with commencement of construction of the new or modified source.

If you have any questions about these concerns, please contact Mr. Christopher Gallenstein at (916) 324-8017 or me.

Sincerely,



Pippin Brehler
Senior Attorney
Legal Office

cc: Tung Le
Manager
Industrial Strategies Division

Christopher Gallenstein
Air Pollution Specialist
Industrial Strategies Division

**Responses to comments of CARB dated July 6, 2016
(Commenter #4)**

4-1 **Comment:** Current 1302(C)(5)(b)(ii) and (v) as moved to proposed 1302(C)(3)(b)(ii) and (vi) – The Proposed changes relax the stringency of the rule by extending the deadline by which offsets must be in place...(r)etaining the existing text will ensure that the proposed changes are not inadvertently interpreted in conflict with the Protect California Air Act of 2003...

Response: The language as proposed in Rule 1302(C)(3)(b)(ii) and (vi) was intended to clarify existing practices as well as provide a USEPA requested “backstop” to ensure that all offsets were fully enforceable and “consumed” at the time of first firing if they had not been so previously. The District understands how the proposed language could conceivably be interpreted by those unfamiliar with current practices as a relaxation of the offset deadline and therefore has revised the proposed rule to retain the existing text.

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Appendix “D”
California Environmental Quality Act
Documentation

1. NOE San Bernardino County (Draft)
2. NOE Riverside County (Draft)

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NOTICE OF EXEMPTION

TO: County Clerk
San Bernardino County
385 N. Arrowhead, 2nd Floor
San Bernardino, CA 92415

FROM: Mojave Desert
Air Quality Management District
14306 Park Ave
Victorville, CA 92392-2310

X MDAQMD Clerk of the Governing Board

PROJECT TITLE: Amendments to Regulation XIII – *New Source Review* and proposed new Rule 1600 – *Prevention of Significant Deterioration*.

PROJECT LOCATION – SPECIFIC: San Bernardino County portion of the Mojave Desert Air Basin and Palo Verde Valley portion of Riverside County.

PROJECT LOCATION – COUNTY: San Bernardino and Riverside Counties

DESCRIPTION OF PROJECT: The Federal Clean Air Act (FCAA) requires that states/local air districts adopt a preconstruction review program for all new and modified stationary sources of pollutants for which their jurisdiction has been classified nonattainment for the Federal Ambient Air Quality Standards (FAAQS). This review applies to “Major” sources of nonattainment air contaminants under the “New Source Review” or “Nonattainment New Source Review” (NSR or NANSR) and is implemented via of Regulation XIII – *New Source Review*. The FCAA also requires that a preconstruction review be performed on certain large stationary sources of attainment air pollutants to ensure that degradation of the air quality does not occur in areas which are currently in compliance with the FAAQS. This program is commonly referred to as “Prevention of Significant Deterioration” (PSD) and has historically been performed in the MDAQMD by the USEPA Region IX.

USEPA has recently requested that the MDAQMD adopt rules and regulation such that they can be delegated the authority to implement the PSD preconstruction review process. At the same time USEPA is requiring the MDAQMD rules involving NANSR provide public notice for a significant number of so called “minor” permitting activities. Furthermore, the Federal Operating Permit Program (Title V Program) contains provisions for “Enhanced NSR” which would, if approved by USEPA, allow NANSR, PSD and Title V permits and permit amendments to be issued simultaneously.

The proposed amendments to Regulation XIII – *New Source Review* and proposed new Rule 1600 – *Prevention of Significant Deterioration* are designed to allow USEPA to delegate PSD authority, adjust the noticing requirements of NANSR to comply with recent USEPA directives regarding the noticing of “minor” source permitting activities, and to allow the MDAQMD to request Enhanced NSR designation such that permitting activities for facilities subject to Title V may be performed concurrently. Additionally the proposed amendments and new rule adoption will clarify some provisions, provide appropriate cross-citations, and correct some minor discrepancies with USEPA requirements contained in the current rules.

NAME OF PUBLIC AGENCY APPROVING PROJECT: Mojave Desert AQMD

NAME OF PERSON OR AGENCY CARRYING OUT PROJECT: Mojave Desert AQMD

EXEMPT STATUS (CHECK ONE)

Ministerial (Pub. Res. Code §21080(b)(1); 14 Cal Code Reg. §15268)

Emergency Project (Pub. Res. Code §21080(b)(4); 14 Cal Code Reg. §15269(b))

X Categorical Exemption – Class 8 (14 Cal Code Reg. §15308)

REASONS WHY PROJECT IS EXEMPT: The proposed amendments to Regulation XIII and proposed new Rule 1600 are exempt from CEQA Review because the proposed action is the amendment/adoption of procedural rules designed to protect the environment. Specifically, the proposed amendment of Regulation XIII increases protections in that it provides for additional agency and public review of a greater number of new or modified Facilities. In addition, the amendments and proposed new Rule 1600 are designed to allow the delegation of a currently existing program, PSD, from USEPA to the District will all the specific requirements and protections which currently exist intact. Therefore, there is no potential that the proposed amendments and new rule might cause the release of additional air contaminants or create any other adverse environmental impacts, a Class 8 Categorical Exemption (14 Cal. Code Reg. §15308) applies.

LEAD AGENCY CONTACT PERSON: Eldon Heaston **PHONE:** (760) 245-1661

SIGNATURE: _____ **TITLE:** Executive Director **DATE:** 10/26/2015

DATE RECEIVED FOR FILING:

NOTICE OF EXEMPTION

TO: Clerk/Recorder
Riverside County
3470 12th St.
Riverside, CA 92501

FROM: Mojave Desert
Air Quality Management District
14306 Park Ave
Victorville, CA 92392-2310

X MDAQMD Clerk of the Governing Board

PROJECT TITLE: Amendments to Regulation XIII – *New Source Review* and proposed new Rule 1600 – *Prevention of Significant Deterioration*.

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PROJECT LOCATION – COUNTY: San Bernardino and Riverside Counties

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USEPA has recently requested that the MDAQMD adopt rules and regulation such that they can be delegated the authority to implement the PSD preconstruction review process. At the same time USEPA is requiring the MDAQMD rules involving NANSR provide public notice for a significant number of so called “minor” permitting activities. Furthermore, the Federal Operating Permit Program (Title V Program) contains provisions for “Enhanced NSR” which would, if approved by USEPA, allow NANSR, PSD and Title V permits and permit amendments to be issued simultaneously.

The proposed amendments to Regulation XIII – *New Source Review* and proposed new Rule 1600 – *Prevention of Significant Deterioration* are designed to allow USEPA to delegate PSD authority, adjust the noticing requirements of NANSR to comply with recent USEPA directives regarding the noticing of “minor” source permitting activities, and to allow the MDAQMD to request Enhanced NSR designation such that permitting activities for facilities subject to Title V may be performed concurrently. Additionally the proposed amendments and new rule adoption will clarify some provisions, provide appropriate cross-citations, and correct some minor discrepancies with USEPA requirements contained in the current rules.

NAME OF PUBLIC AGENCY APPROVING PROJECT: Mojave Desert AQMD

NAME OF PERSON OR AGENCY CARRYING OUT PROJECT: Mojave Desert AQMD

EXEMPT STATUS (CHECK ONE)

Ministerial (Pub. Res. Code §21080(b)(1); 14 Cal Code Reg. §15268)

Emergency Project (Pub. Res. Code §21080(b)(4); 14 Cal Code Reg. §15269(b))

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LEAD AGENCY CONTACT PERSON: Eldon Heaston **PHONE:** (760) 245-1661

SIGNATURE: _____ **TITLE:** Executive Director **DATE:** 10/26/2015

DATE RECEIVED FOR FILING:

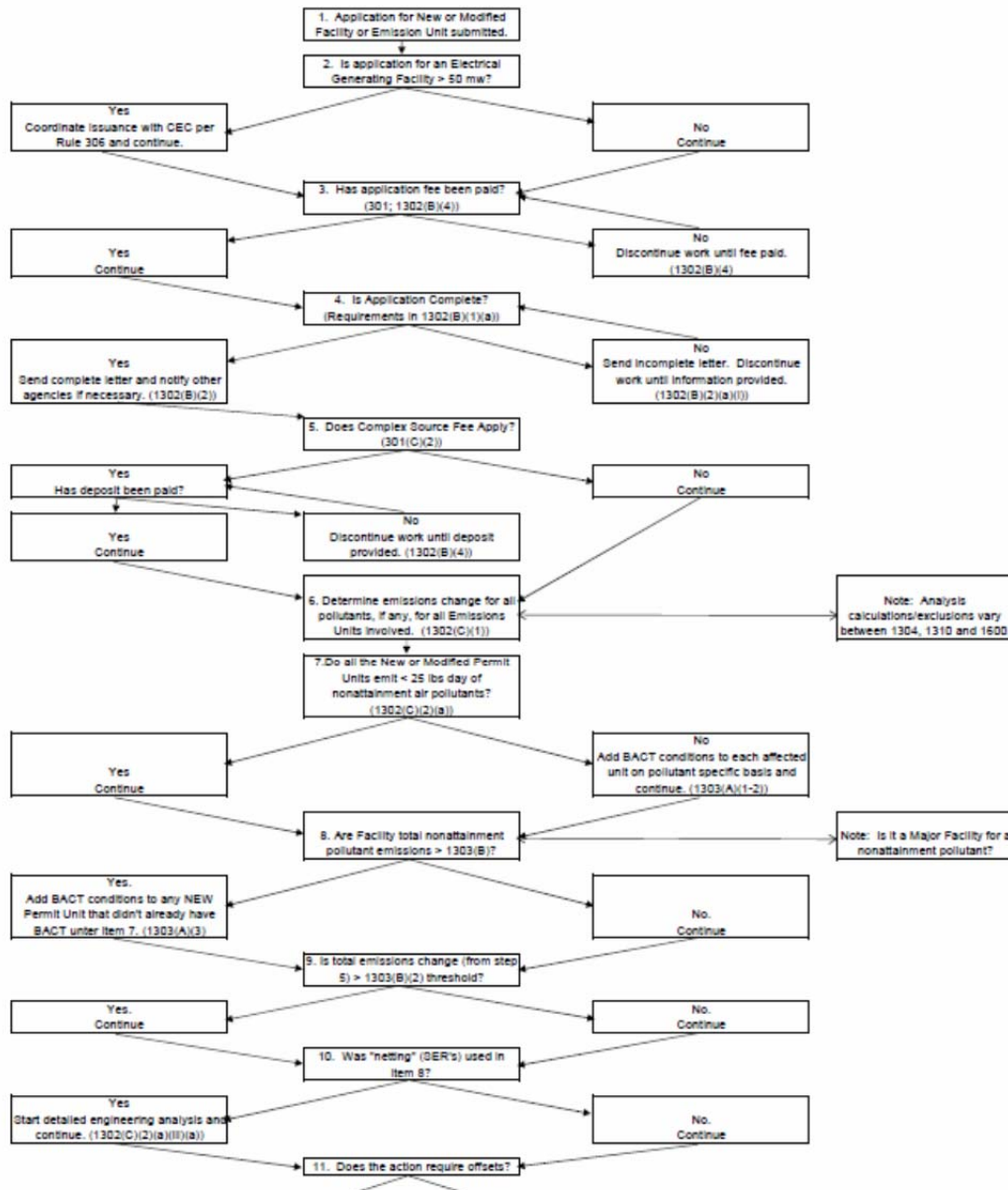
Appendix “E”

NSR Flow Charts

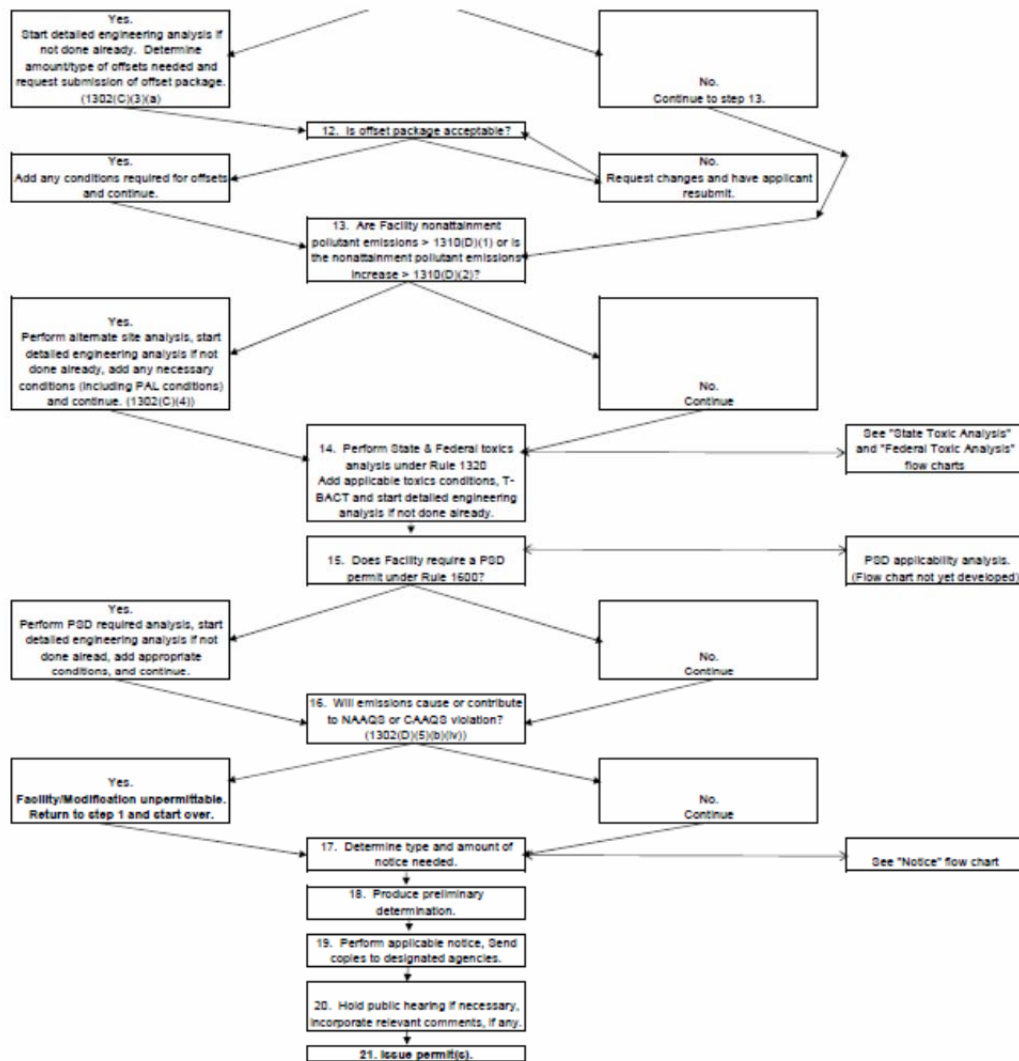
The following flow charts show the intended analysis path for Regulation XIII as generally set forth in proposed amended Rule 1302(C). These flow charts are for information purposes only and should not be relied upon in determining applicability or requirements. In case of inconsistency between the charts and the rules the District Rule language shall control.

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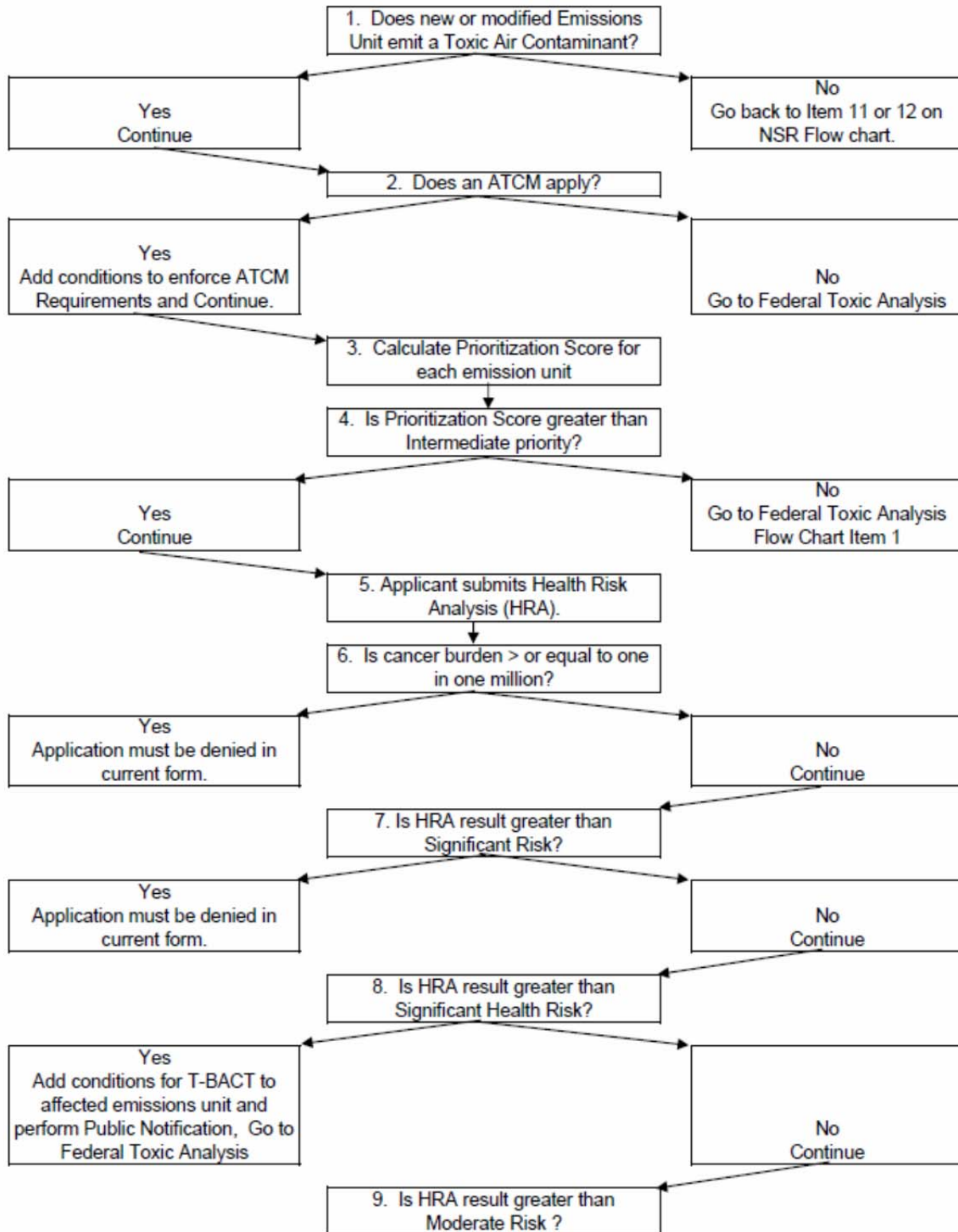
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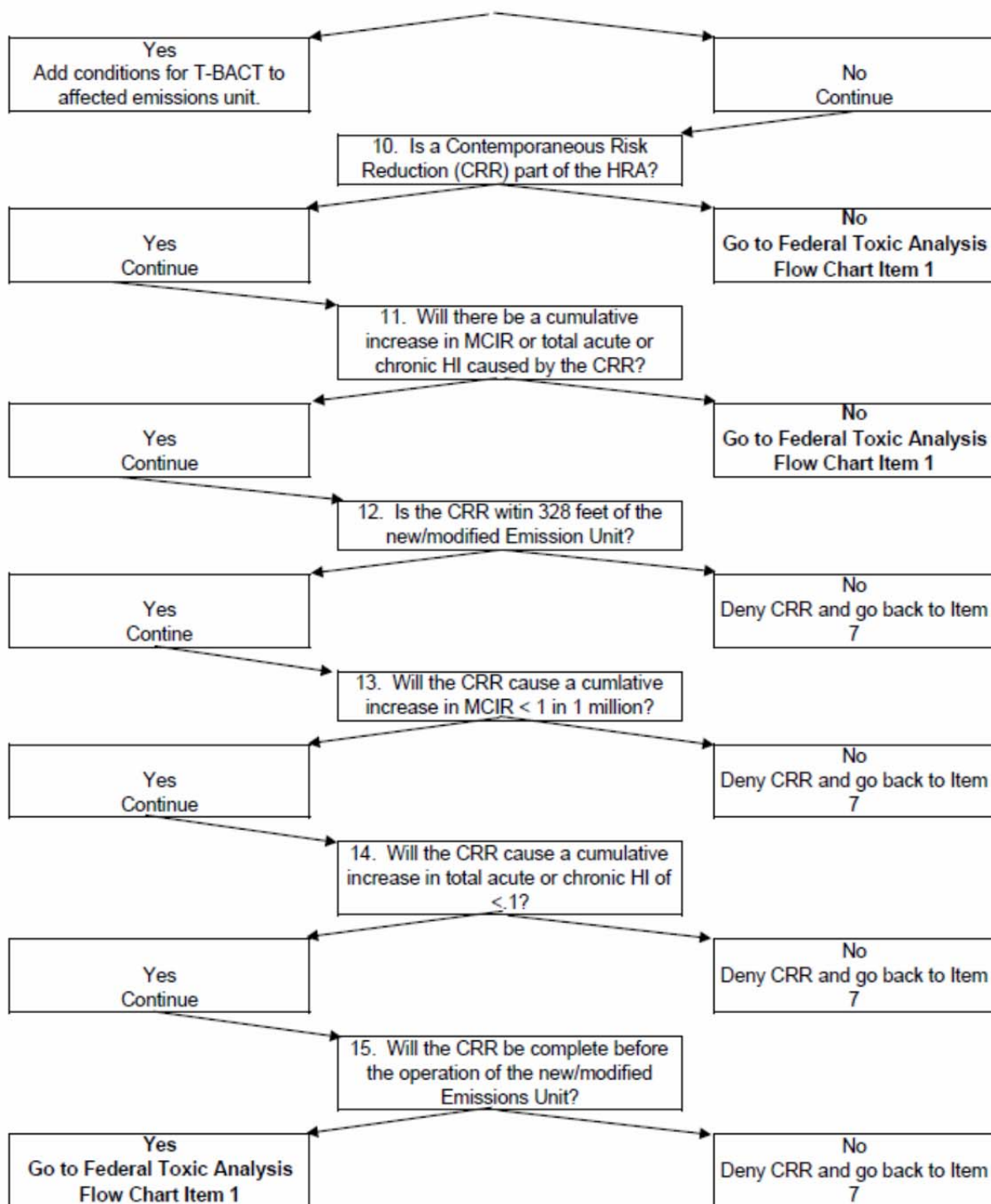
NSR Flow Chart (Proposed Amended)



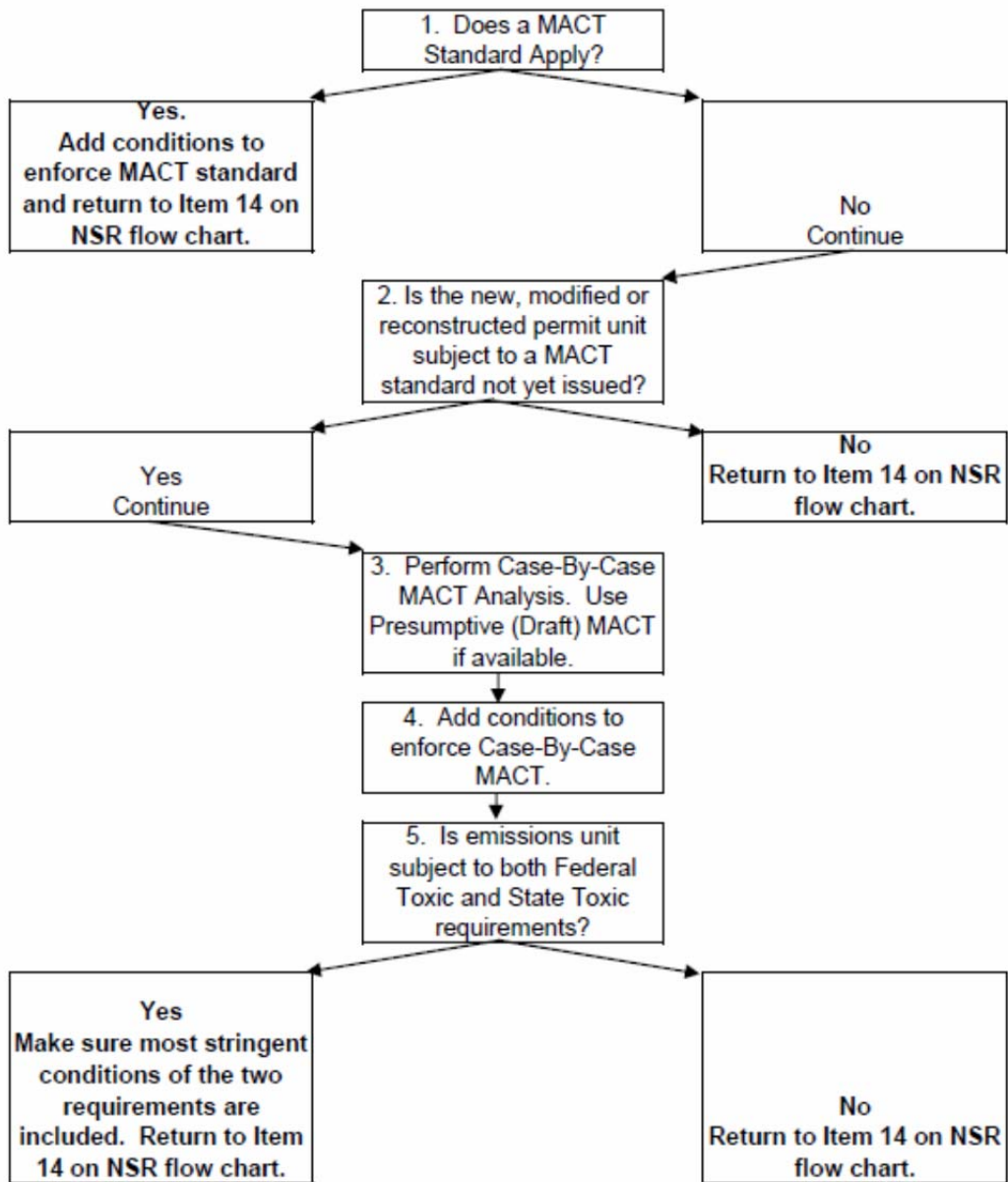
State Toxics Analysis



State Toxics Analysis

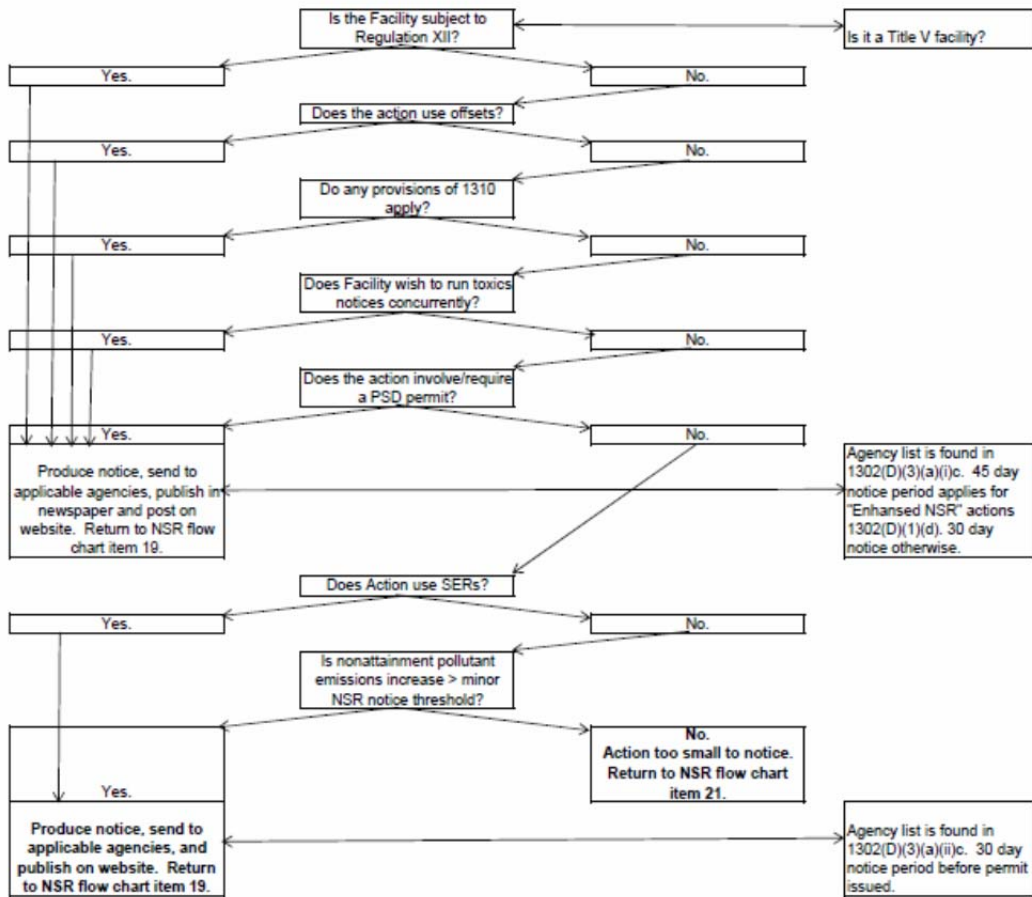


Federal Toxics Analysis



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Notice Type Analysis



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Appendix “F”

Bibliography

The following documents were consulted in preparation of this staff report:

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42 U.S.C. §7411
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42 U.S.C. §7475
42 U.S.C. §7479
42 U.S.C. §7502(b)(6)
42 U.S.C. §7503
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Health and Safety Code §40920.6
Health and Safety Code §§42300 et. seq
Health and Safety Code §42302.3
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Health and Safety Code §42504(b)

Health and Safety Code §44362

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40 CFR 51, Appendix V, 2.0
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40 CFR 51.102
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